Manual of the State Land Evaluation Advisory Council

Published by the State Land Evaluation Advisory Council
Commonwealth of Virginia
P.O. Box 2460
Richmond, Virginia 23218-2460
2003

CONTENTS

SLEAC MEMBERS , STAFF AND INTERESTED PARTIES

Mr. Kenneth W. Thorson, Chairman
Tax Commissioner
Virginia Department of Taxation
2220 West Broad Street
Richmond, Virginia 23220

Mr. J. Carlton Courter, III
Commissioner
Department of Agriculture
& Consumer Services
1100 Bank Street
Richmond, Virginia 23219

Mr. James W. Garner, Jr.
State Forester or
James D. Starr, Designee
Department of Forestry
P. O. Box 3758
Charlottesville, Virginia 22903

Mr. Joseph H. Maroon, Director
Leon E. App, Acting Deputy Director
Department of Conservation
& Recreation
203 Governor Street
Suite 302
Richmond, Virginia 23219

Dr. Sharron S. Quisenberry, Dean
College of Agriculture & Life Sciences
Virginia Polytechnic Institute & State University
Blacksburg, Virginia 24061 or
Dr. Charlie C. Stallings
106 – B Hutcheson Hall (0437)
Blacksburg, Virginia 24061

STAFF

Mr. Roy Seward
Department of Agriculture
and Consumer Services
1100 Bank Street
Richmond, Virginia 23219

Dr. Gordon Groover, Project Leader
301-A Hutcheson Hall
Virginia Polytechnic Institute &
State University
Blacksburg, Virginia 24061

INTERESTED PARTIES

Ms. Rachel Morris
Legislative Specialist
Public Affairs Department
Virginia Farm Bureau Federation
12580 West Creek Parkway
P. O. Box 27552
Richmond, Virginia 23261

Introduction

In 1971, the Virginia General Assembly enacted a law permitting localities to adopt a program of special assessments for agricultural, horticultural, forest and open space lands (Sections 58.1-3229 through 58.1-3244 of the *Code of Virginia*). The purpose of the program is stated as:

- To encourage the preservation and proper use of such real estate in order to assure a readily available source of agricultural, horticultural and forest products and of open spaces within the reach of concentrations of population,

- To conserve natural resources in forms which will prevent erosion and to protect adequate and safe water supplies,

- To preserve scenic natural beauty and open spaces,

- To promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population, and

- To promote a balanced economy and ameliorate pressures which force conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes.

While the Code sets out some basic prerequisites for a landowner wishing to qualify for use-value assessments, it has assigned responsibility for prescribing uniform standards for qualification to the Commission of Agriculture and Consumer Services (agricultural and horticultural lands), the State Forester (forest lands), and the Director of the Department of Conservation and Recreation (open space lands). Further, to aid the localities in arriving at use-value assessments, the law has established the State Land Evaluation Advisory Council, composed of these four departments plus the Tax Commissioner, and the Dean of the College of Agriculture and Life Sciences of Virginia Polytechnic Institute and State University.

Each year the Council determines and publishes ranges of suggested values for several classes of agricultural, horticultural, forest and open space land in the localities having such a program. The local assessing officer uses these ranges along with his personal knowledge of use values in the area and the other available evidence of land capability in arriving at the official use-value assessment of any parcel of land.

The purpose of this manual is to bring together background information needed by local officials involved in or considering a use-value assessment program. Further information is available upon request from the State Evaluation Advisory Council (SLEAC) members and their staff listed on the opposite page.

Part 1
Law and General Synopsis

CODE OF VIRGINIA

Chapter 32 of Title 58.1, Article 4
(Includes amendments by the 1998 General Assembly)

Special Assessments for Agricultural, Horticultural, Forest, Open Space, or Newly Annexed Real Estate

GENERAL SYNOPSIS BY SECTIONS

§ 58.1-3229. Declaration of policy.--An expanding population and reduction in the quantity and quality of real estate devoted to agricultural, horticultural, forest and open space uses make the preservation of such real estate a matter vital to the public interest. It is, therefore, in the public interest (a) to encourage the preservation and proper use of such real estate in order to assure a readily available source of agricultural, horticultural and forest products and of open spaces within reach of concentrations of population, to conserve natural resources in forms which will prevent erosion, to protect adequate and safe water supplies, to preserve scenic natural beauty and open spaces and to promote land-use planning and the orderly development of real estate for the accommodation of an expanding population, and (b) to promote a balanced economy and ameliorate pressures which force the conversion of such real estate to more intensive uses and which are attributable in part to the assessment of such real estate at values incompatible with its use and preservation for agricultural, horticultural, forest or open space purposes.

It is the intent of this article to provide for the classification, and permit the assessment and taxation, of such real estate in a manner that will promote the preservation of it ultimately for the public benefit.

A declaration *that the preservation of real estate for agricultural, horticultural, forest and open space use is in the public interest and that the classification, special assessment and taxation of such property in a manner that promotes its preservation help foster long term public benefits.*

§ 58.1-3230. Special Classifications of real estate established and defined.--For the purposes of this article the following special classifications of r eal estate are established and defined:

Special Classifications of Real Estate Defined:

"Real estate devoted to agricultural use" shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (ə 9-6.14:1 et seq.), or devoted to and rneeting the requirements and qualifications for payments on other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Real estate upon which recreational activities are conducted for a profit or otherwise, shall be considered real estate devoted to agricultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

(a) Agricultural uses: *Lands that meet prescribed standards for bona fide production for sale of crops and livestock or in approved soil conservation programs. Standards prescribed by the Commissioner of Agriculture & Consumer Services (after public hearings).*

"Real estate devoted to horticultural use" shall mean real estate devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts, and berries; vegetables; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.); or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a

(b) Horticultural uses: *Lands that meet prescribed standards for bona fide production for sale of fruits, vegetables, ornamental plants and ornamental products. Standards prescribed by the Commissioner of Agriculture & Consumer Services (after public hearings)*

soil conservation program under an agreement with an agency of the federal government. Real estate upon which recreational activities are conducted for profit or otherwise, shall be considered real estate devoted to horticultural use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it does not meet the uniform standards prescribed by the Commissioner.

"Real estate devoted to forest use" shall mean land including the standing timber and trees thereon, devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240 and in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.). Real estate upon which recreational activities are conducted for profit, or otherwise, shall still be considered real estate devoted to foret use as long as the recreational activities conducted on such real estate do not change the character of the real estate so that it no longer constitutes a forest area under standards prescribed by the State Forester pursuant to the authority set out in § 58.1-3240.

(c) Forest Uses: *Productive and nonproductive forest land - see standards prescribed by the State Forester (after public hearings).*

"Real estate devoted to open-space use" shall mean real estate used as, or preserved for, (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) floodways, (iv) wetlands as defined in § 58.1-3666, (v) riparian buffers as defined in § 58.1-3666, (vi) historic or scenic purposes, or (vii) assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan, under uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in Section 58.1-3240, and in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) and the local ordinance.

(d) Open space uses: *Lands other than agricultural, horticultural, or forest lands that are used or preserved for park or recreational purposes, conservation, flood ways, wetlands, riparian buffers, historic or scenic purposes, or community shaping purposes or for the public interest all as defined by standards prescribed by the Director of the Department of Conservation and Historic Resources (after public hearings).*

§ 58.1-3231. Authority of counties, cities and towns to adopt ordinances; general reassessment following adoption of ordinance. --Any county, city or town which has adopted a land-use plan may adopt an ordinance to provide for the use value assessment and taxation, in accord with the provisions of this article, of real estate classified in § 58.1 -3230. The local governing body pursuant to § 58.1-3237.1 may provide in the ordinance that property located in specified zoning districts shall not be eligible for special assessment as provided in this article. The provisions of this article shall not be applicable in any county, city or town for any year unless such an ordinance is adopted by the governing body thereof not later than June 30 of the year previous to the year when such taxes are first assessed and levied under this article, or December 31 of such year for localities which have adopted a fiscal year assessment date of July 1, under Chapter 30 of this Subtitle. The provisions of this article also shall not apply to the assessment of any real estate assessable pursuant to law by a central state agency.

Land used in agricultural and forestal production within an agricultural district, or forestal district or an agricultural and forestal district that has been established under § 15.1-1506 et seq., shall be eligible for the use value assessment and taxation whether or not a local land-use plan or local ordinance pursuant to this section has been adopted.

An ordinance must be adopted *by the local government before special classification, assessment and taxation can be permitted in a locality. (This is a constitutional requirement.) The ordinance must be adopted by June 30 of the year prior to the first year that use-value taxes are assessed and levied, or by December 31 prior to such year for localities with a fiscal year assessment date of July 1.*

- *A land-use plan must be adopted prior to the adoption of the local ordinance (land-use regulation or zoning is not required by the Act.)*

Such ordinance shall provide for the assessment and taxation in accordance with the provisions of this article of any or all of the four classes of real estate set forth in §58.1-3230.

Notwithstanding any other provision of law, the governing body of any county, city or town shall be authorized to direct a general reassessment of real estate in the year following adoption of an ordinance pursuant to this article.

- *The local ordinance may permit special classification, assessment, and taxation of any or all of the four classes (agricultural, horticultural, forest or open space).*

- *General reassessment is authorized (but not required) in the year following adoption of the local ordinance.*

§ 58.1-3232. Authority of city to provide for assessment and taxation of real estate in newly annexed area. --The council of any city may adopt an ordinance to provide for the assessment and taxation of only the real estate in an area newly annexed to such city in accordance with the provisions of this article. All of the provisions of this article shall be applicable to such ordinance, except that if the county from which such area was annexed has in operation an ordinance hereunder, the ordinance of such city may be adopted at any time prior to April 1 of the year for which such ordinance will be effective, and applications from landowners may be received at any time within thirty days of the adoption of the ordinance in such year. lf such ordinance is adopted after the date specified in Section 58.1-3231, the ranges of suggested values made by the State Land Evaluation Advisory Council for the county from which such area was annexed are to be considered the value recommendations for such city. An ordinance adopted under the authority of this section shall be effective only for the tax year immediately following annexation.

- *A city may provide for special assessment and taxation in an area newly annexed by the city but only for the tax year immediately following annexation.*

§ 58.1-3233. Determinations to be made by local officers before assessment of real estate under ordinance. - Prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to this article, the local assessing officer shall:

1. Determine that the real estate meets the criteria set forth in § 58.1-3230 and the standards prescribed thereunder to qualify for one of the classifications set forth therein, and he may request an opinion from the Director of the Department of Conservation and Recreation, the State Forester or the Commissioner of Agriculture and Consumer Services.

2. Determine further that real estate devoted solely to (i) agricultural or horticultural use consists of a minimum of five acres, (ii) forest use consists of a minimum of twenty acres and (iii) open-space use consists of a minimum of five acres or such greater minimum acreage as may be prescribed by a local ordinance, except that for real estate adjacent to a scenic river, a scenic highway, a Virginia Byway or public property in the Virginia Outdoors Plan or for any real estate in any city, county or town having a density of population greater than 5,000 per square mile, for any real estate in any county operating under the urban county executive form of government, or the unincorporated Town of Yorktown chartered in 1691, the governing body may by ordinance prescribe that land devoted to open-space uses consist of a minimum of two acres.

The minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots recorded after July 1, 1983, titled in the same ownership. For purposes of this section, properties separated only by a public

Qualifications for special classification to be verified:

(I) Agricultural or horticultural lands: 5 acres minimum and must meet standards established by the Commissioner of Agriculture & Consumer Services.

(2) Forest use: 20 acres minimum and must meet standards established by the State Forester.

(3) Open space use: 5 acres minimum; except that cities, counties or towns with a population density of greater than 5,000 per square mile may at local option set a minimum two acres, and must meet standards established by the Director of the Department of Conservation and Recreation.

(4) Contiguous parcels, excluding recorded subdivision lots, in the same ownership, may be added together to meet the minimum acreage requirement.

right of way are considered contiguous; and

3. Determine further that real estate devoted to open-space use is (i) within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to Chapter 36 (§ 15.1-1506 et seq.) of Title 15.1, or (ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in § 58.1 -3230, or (iii) subject to a recorded commitment entered into by the landowner with the local governing body, or its authorized designee, not to change the use to a non-qualifying use for a time period stated in the commitment of not less than four years nor more than ten years. Such commitment shall be subject to uniform standards prescribed by the Director of the Department of Conservation and Recreation pursuant to the authority set out in § 58.1-3240. Such commitment shall run with the land for the applicable period, and may be terminated in the manner provided in § 15.1-1513 for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.

§ 58.1-3234. Application by property owners for assessment, etc., under ordinance; continuation of assessment, etc. - Property owners must submit an application for taxation on the basis of a use assessment to the local assessing officer;

1. At least sixty days preceding the tax year for which such taxation is sought; or

2. In any year in which a general reassessment is being made the property owner may submit such application until thirty days have elapsed after his notice of increase in assessment is mailed in accordance with § 58.1-3330, or sixty days preceding the tax year, whichever is later, or

3. In any locality which has adopted a fiscal tax year under Chapter 30 of this Subtitle III, but continues to assess as of January 1, such application must be submitted for any year at least sixty days preceding the effective date of the assessment for such year.

The governing body, by ordinance, may permit applications to be filed within no more than sixty days after the filing deadline specified herein, upon the payment of a late filing fee to be established by the governing body. An individual who is owner of an undivided interest in a parcel may apply on behalf of himself and the other owners of such parcel upon submitting an affidavit that such other owners are minors or cannot be located. An application shall be submitted whenever the use or acreage of such land previously approved changes; however, no application fee maybe required when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for taxation on the basis of use assessment. The governing body of any county, city or town may, however, require any such property owner to revalidate annually with such locality, on or before the date on which the last installment of property tax prior to the effective date of the assessment is due, on forms prepared by the locality, any applications previously approved. Each locality which has adopted an ordinance hereunder may provide for the imposition of a revalidation fee every sixth year. Such revalidation fee shall not, however, exceed the application fee currently charged by the locality. The governing body may also provide for late filing of revalidation forms on or before the

Applications for special assessment required:

- *Must be received initially by the local assessing officer at least 60 days preceding the tax year (November 2 or May 2, as the case may be). In any year of a general reassessment, the application may be received 30 days after the taxpayer's notice of increase is mailed, or 60 days preceding the tax year, whichever is later.*
- *In those localities with a fiscal tax year but with assessments effective January 1, an application must be received by November 2.*
- *The local government may provide for late filing within no more than 60 days after the normal filing deadline, upon payment of a late filing fee.*
- *Must be submitted whenever the use or acreage of the land previously approved changes.*
- *The local governing body may require annual validation but may impose a revalidation fee only at six-year intervals, and may provide for a late filing of revalidation on payment of a late filing revalidation fee.*
- *Localities which have adopted an ordinance may impose a revalidation fee every sixth year.*

effective date of the assessment, on payment of a late filing fee. Forms shall be prepared by the State Tax Commissioner and supplied to the locality for use of the applicants and applications shall be submitted on such forms. An application fee may be required to accompany all such applications.

- *Standard forms (prepared by the Tax Commissioner) to be used.*
- *An application fee may be required.*

In the event of a material misstatements of facts in the application or a material change in such facts prior to the date of assessment, such application for taxation based on use assessment granted thereunder shall be void and the tax for such year extended on the basis of value determined under § 58.1-3236 D. Except as provided by local ordinance, no application for assessment based on use shall be accepted or approved if, at the time the application is filed, the tax on the land affected is delinquent. Upon the payment of all delinquent taxes, including penalties and interest, the application shall be treated in accordance with the provisions of this section.

- *Misstatements or changes of use classification prior to the date of assessment will void the special assessment authorization.*

Continuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continuance of the real estate in a qualifying use, continued payment of taxes as referred to in § 58.1-3235, and compliance with the other requirements of this article and the ordinance and not upon continuance in the same owner of title to the land.

- *Classification and special assessment may continue with change ownership unless there is a change in use or unless there is a separation or split-off as described under § **58.1-3241.***
- *Use valuation taxation may continue without the imposition of the roll-back tax when the use of a parcel shifts to another qualifying use.*

§ 58.1-3235. Removal of parcels from program if taxes delinquent. - If on April 1 of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this article are delinquent, the appropriate county, city or town treasurer shall forthwith send notice of that fact and the general provisions of this section to the property owner by first-class mail. If, after sending such notice, such delinquent taxes remain unpaid on June 1, the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program. Such removal shall become effective for the current tax year.

- *Parcels of land shall be removed from the land use program if delinquent taxes are not paid by June 1 of the year following the year in which due.*

§ 58.1-3236. Valuation of real estate under ordinance. - (A) In valuing real estate for purposes of taxation by any county, city or town which has adopted an ordinance pursuant to this article, the commissioner of the revenue or duly appointed assessor shall consider only those indicia of value which such real estate has for agricultural, horticultural, forest or open space use, and real estate taxes for such jursidiction shall be extended upon the value so determined. In addition to use of his personal knowledge, judgment and experience as to the value of real estate in agricultural, horticultural, forest or open space use, he shall, in arriving at the value of such land, consider available evidence of agricultural, horticultural, forest or open space capability, and the recommendations of value of such real estate as made by the State Land Evaluation Advisory Council.

Land use assessment:

Special assessments to be based on value for uses as agricultural, horticultural, forest and open space lands.

(a) Assessment to be made by assessing officer(s) and recommendations on values provided by State Land Evaluation Advisory Council must be considered before assessment decisions are made (Right of judgment is left with the assessing officer).

(B) In determining the total area of real estate actively devoted to agricultural, horticultural, forest or open space use there shall be included the area of all real estate under barns, sheds, silos, cribs, greenhouses, public recreation facilities and like structures, lakes, dams, ponds, streams, irrigation ditches

(b) All lands included in special use classification will receive special assessment except lands (yards, etc.) used in connection with, or under the farmhouse or home, or any other

and like facilities; but real estate under, and such additional real estate as may be actually used in connection with, the farmhouse or home or any other structure not related to such special use shall be excluded in determining such total area.

(C) All structures which are located on real estate in agricultural, horticultural, forest or open space use and the farmhouse or home or any other structure not related to such special use and the real estate on which the farmhouse or home or such other structure is located, together with the additional real estate used in connection therewith, shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable structures and other real estate in the locality.

(D) In addition, such real estate in agricultural, horticultural, forest or open space use shall be evaluated on the basis of fair market value as applied to other real estate in the taxing jurisdiction, and land book records shall be maintained to show both the use value and the fair market value of such real estate.

§ 58.1-3237. Change in use or zoning of real estate assessed under ordinance; roll-back taxes.--A. When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, or the zoning of the real estate is changed to a more intensive use at the request of the owner or his agent, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes. Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use or zoning. Liability for roll-back taxes shall attach and be paid to the treasurer only if the amount of tax due exceeds ten dollars.

B. The roll-back tax shall be equal to the sum of the deferred tax for each of the five most recent complete tax years including simple interest on such roll-back taxes at a rate set by the governing body, no greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916 for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value.

C. Liability to the roll-back taxes shall attach when a change in use occurs, or a change in zoning of the real estate to a more intensive use at the request of the owner or his agent occurs. Liability to the roll-back taxes shall not attach when a change in ownership of the title takes place if the new owner does not rezone the real estate to a more intensive use and continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate which has been zoned to more intensive use at the request of the owner or his agent as provided in subsection D, or otherwise subject to or liable for roll-back taxes, shall, within sixty days following such change in use or zoning, report such change to the commissioner of the

structure not related to the special use.

(c) Special assessment applies to land only (not buildings or other improvements).

(d) All lands receiving special assessment to be assessed also on fair market value and both values to be recorded in land books.

Roll-back tax:

- *When real estate that has been taxed according to special assessment changes to a non-qualifying use or zoning changes it to a more intensive use at the request of the owner or his agent, it shall be subject to additional tax referred to as a roll-back tax.*

- *Roll-back tax is equal to the difference between special assessment tax and tax on fair market value, for each of the five most recent complete tax years including simple interest on such for the current year shall be extended on the basis of fair roll-back taxes at a rate set by the governing body, no greater than the rate applicable to delinquent taxes in such locality.*

- *Roll-back tax is not due when a qualifying property has a change in ownership unless the use of the property changes to a nonqualifying use.*

- *The owner must report a change in use or zoning within sixty days to the commissioner of the revenue or assessing officer who will determine and assess the roll-back tax and certify the amount to be paid to the treasurer. The amount*

revenue or other assessing officer on such forms as may be prescribed. The commissioner shall forthwith determine and assess the roll-back tax, which shall be assessed, against and paid by the owner of the property at the time the change in use which no longer qualifies occurs, or at the time of the zoning of the real estate to a more intensive use at the request of the owner or his agent occurs, and shall be paid to the treasurer within thirty days of the assessment. If the amount due is not paid by the due date, the treasurer shall impose a penalty and interest on the amount of the roll-back tax, including interest for prior years. Such penalty and interest shall be imposed in accordance with §§58.1-3915 and 58.1-3916.

must be paid within thirty days thereafter.

D. Real property zoned to a more intensive use, at the request of the owner or his agent, shall be subject to and liable for the roll-back tax at the time such zoning is changed. The roll-back tax shall be levied and collected from the owner of the real estate in accordance with subsection C. Real property zoned to a more intensive use before July 1, 1988, at the request of a the owner or his agent, shall be subject to and liable for the roll-back tax at the time the qualifying use is changed to a nonqualifying use. Real property zoned to a more intensive use at the request of the owner or his agent after July 1, 1988, shall be subject to and liable for the roll-back tax at the time of such zoning. Said roll-back tax, plus interest calculated in accordance with subsection B, shall be levied and collected at the time such property was rezoned. For property rezoned after July 1, 1988, but before July 1, 1992, no penalties or interest, except as provided in subsection B, shall be assessed, provided the said roll-back tax is paid on or before October 1, 1992. No real property rezoned to a more intensive use at the request of the owner or his agent shall be eligible for taxation and assessment under this article, provided that these provisions shall not be applicable to any rezoning which is required for the establishment, continuation, or expansion of a qualifying use. If the property is subsequently rezoned to agricultural, horticultural, or open space, it shall be eligible for consideration for assessment and taxation under this article only after three years have passed since the rezoning was effective.

- *Real property zoned after June 30, 1988 to a more intensive use, at the request of the owner or his agent, shall be subject to the roll-back tax at the time zoning is changed. The roll-back tax is levied and collected at the time such property was rezoned, not at the time the property's use is changed.*

- *Property zoned before July 1, 1988 shall be subject to the roll-back tax at the time the use is changed to a nonqualifying use.*

However, the owner of any real property that qualified for assessment and taxation on the basis of use, and whose real property was rezoned to a more intensive use at the owner's request prior to 1980, may be eligible for taxation and assessment under this article provided the owner applies for rezoning to agricultural, horticultural open-space or forest use. The real property shall be eligible for assessment and taxation on the basis of the qualifying use for the tax year following the effective date of the rezoning. If any such real property is subsequently rezoned to a more intensive use at the owner's request, within five years from the date the property was initially rezoned to a qualifying use under this section, the owner shall be liable for roll-back taxes when the property is rezoned to a more intensive use. Additionally, the owner shall be subject to a penalty equal to fifty percent of the roll-back taxes due as determined under subsection B of this section.

- *Real Property that has been down zoned enabling the property to qualify for land use taxation and then rezoned at the request of the owner may be subject to a penalty equal to 50% of the roll-back taxes.*

E. If real estate annexed by a city and granted use value assessment and taxation becomes subject to roll-back taxes, and such real estate likewise has been granted use value assessment and taxation by the county prior to annexation, the city shall collect roll-back taxes and interest for the maximum period

allowed under this section and shall return to the county a share of such taxes and interest proportionate to the amount of such period, if any, for which the real estate was situated in the county.

- *Requires city to return to a county a proportionate share of roll-back tax and interest to county when property is annexed.*

§ 58.1-3237.1. Authority of counties adjacent to counties with urban executive form of government to enact additional provisions concerning zoning classifications. - Any county not organized under the provisions of Chapters 13 (§ 15.1-582 et seq.), 14 (§ 15.1-669 et seq.), or 15 (§ 15.1-722 et seq.) of Title 15.1, which is contiguous to a county with the urban executive form of government may include the following additional provisions in any ordinance enacted under the authority of this article:1. The governing body may exclude land lying in planned development, industrial or commercial zoning districts from assessment under the provisions of this article This provision applies only to zoning districts established prior to January 1, 1980. 2. The governing body may provide that when the zoning of the property taxed under the provisions of this article is changed to allow a more intensive nonagricultural use at the request of the owner or his agent, such property shall not be eligible for assessment and taxation under this article This shall not apply, however, to property which is zoned agricultural and is subsequently rezoned to a more intensive use which is complementary to agricultural use provided such property continues to be owned by the same owner who owned the property prior to rezoning and continues to operate the agricultural activity on the property. Notwithstanding any other provision of law, such property shall be subject to and liable for roll-back taxes at the time the zoning is changed to allow any use more intensive than the use for which it qualifies for special assessment. The roll-back tax, plus interest, shall be calculated, levied and collected from the owner of the real estate in accordance with § 58.1-3237 at the time the property is rezoned.

- This section applicable only to Loudoun County.

§ 58.1-3238. Failure to report change in use; misstatements in applications. - Any person failing to report properly any change in use of property for which an application for use value taxation had been filed shall be liable for all such taxes, in such amounts and at such times as if he had complied herewith and assessments had been properly made, and he shall be liable for such penalties and interest thereon as may be provided by ordinance. Any person making a material misstatement of fact other than a clerical error in any such application shall be liable for all such taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon. If such material misstatement was made with the intent to defraud the locality, he shall be further assessed with an additional penalty of 100 percent of such unpaid

Penalties:

Action if changes in use are not reported:

- *Owner is liable for all taxes due (including roll-back) plus penalties and interest provided by local ordinance.*

Action if there is a material misstatement of fact in applications for special assessment.

- *Owner is liable for all taxes due including roll-back plus penalties and interest provided by local ordinance (plus 100% of unpaid taxes if the misstatement is made with the intent to defraud the locality).*

taxes.

For purposes of this section and § 58.1-3234, incorrect information on the following subjects will be considered material misstatements of fact:

1. The number and identities of the known owners of the property at the time of application;

2. The actual use of the property.

The intentional misrepresentation of the number of acres in the parcel or the number of acres to be taxed according to use shall be considered a material misstatement of fact for the purpose of this section and § 58.1-3234.

§ 58.1-3239. State Land Evaluation Advisory Committee continued as State Land Evaluation Advisory Council; membership; duties; ordinances to be filed with Council. - The State Land Evaluation Advisory Committee is continued and shall hereafter be known as the State Land Evaluation Advisory Council. The Advisory Council shall be composed of the Tax Commissioner, the dean of the College of Agriculture of Virginia Polytechnic Institute and State University, the State Forester, the Commissioner of Agriculture and Consumer Services and the Director of the Department of Conservation and Recreation.

The Advisory Council shall determine and publish a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forest and open space uses in the various areas of the Commonwealth as needed to carry out the provisions of this article.

On or before October 1 of each year the Advisory Council shall submit recommended ranges of suggested values to he effective the following January 1, or July 1 in the case of localities with fiscal year assessment under the authority of Chapter 30 of this subtitle, within each locality which has adopted an ordinance pursuant to the provisions of this article based on the productive earning power of real estate devoted to agricultural, horticultural, forest and open space uses and make such recommended ranges available to the commissioner of the revenue or duly appointed assessor in each such locality.

The Advisory Council, in determining such ranges of values, shall base the determination on productive earning power to be determined by capitalization of warranted cash rents or by the capitalization of incomes of like real estate in the locality or a reasonable area of the locality.

Any locality adopting an ordinance pursuant to this article shall forthwith file a copy thereof with the Advisory Council.

§ 58.1-3240. Duties of Directors of Department of Conservation and Historic Resources, the State Forester and Commissioner of Agriculture and Consumer Services; remedy of person aggrieved by action or nonaction of Director, State Forester or Commissioner. - The Director of the Department of Conservation and Recreation, the State Forester, and the Commissioner of Agriculture and Consumer Services shall provide, after holding public hearings, to the commissioner of the revenue or duly appointed assessor of each locality adopting an ordinance pursuant of this article, a statement of the standards referred to in § 58.1-3230 and subdivision 1 of § 58.1-3233, which shall be applied uniformly throughout the Commonwealth in determining whether real estate is devoted to agricultural use, horticultural use, forest use or open space use for the purposes of

State Land Evaluation Advisory Council:

Composed of:
Tax Commissioner
Dean, College of Agriculture, VPI & SU
Commissioner of Agriculture & Consumer Services
Director, Department of Conservation & Recreation
State Forester

- *To determine and publish prior to October 1 each year a range of suggested values to be effective the following January 1 or July 1 in the case of fiscal year localities, for each locality that has adopted an ordinance.*

- *To base ranges of values on productive earning power in each special classification use.*

- *Each local government that adopts ordinance must file a copy with the State Land Evaluation Advisory Council.*

Uniform standards to be provided after public hearing on:

- *Agricultural and horticultural uses from the Commissioner of Agriculture & Consumer Services.*

- *Forest use from State Forester.*

- *Open space from Director of Department of Conservation and Recreation.*
- *Procedures to be followed in obtaining opinions regarding*

this article and the procedure to be followed by such official to obtain the opinion referenced in subdivision 1 of § 58.1-3233. Upon the refusal of the Commissioner of Agriculture and Consumer Services, the State Forester or the Director of Conservation and Recreation to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set forth in the statements filed pursuant to this section, the party aggrieved may seek relief in the circuit court of the county or city wherein the real estate in question is located, and in the event that the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this article.

properties provided by the official who provides the standards for each class.

- *In the event of unfavorable opinions or a refusal to issue an opinion, the property owner may seek relief from local courts of record.*

§ 58.1-3241. Separation of part of real estate assessed under ordinance; contiguous real estate located in more than one taxing locality. - (A) Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable. Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article.

- *Any separation or split-off of lots or parcels shall subject the real estate so subdivided to the roll-back tax unless the resulting parcels meet the acreage and use requirements. If part of a tract of qualifying land is sold or changes to non-qualifying use, the remaining tract does not change if the acreage is sufficient to qualify.*

No subdivision of property which results in parcels which meet the minimum acreage requirements of this article, and which the owner attests is for one and more of the purposes set forth in § 58.1-3230 shall be subject to the provisions of this section.

(B) Where contiguous real estate in agricultural, horticultural, forest or open-space use in one ownership is located in more than one taxing locality, compliance with the minimum acreage shall be determined on the basis of the total area of such real estate and not the area which is located in the particular taxing locality

- *Single properties located in more than one taxing locality are not to be treated as separate tracts for each locality for purposes of meeting minimum acreage.*

§ 58.1-3242. Taking the real estate assessed under ordinance by right of eminent domain. - The taking of real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article by right of eminent domain shall not subject the real estate so taken to the roll-back taxes herein imposed.

- *Properties with special assessment that are taken by right of eminent domain are not subject to roll-back taxes.*

§ 58.1-3243. Application of other provisions of Title 58.1 - (a) The provisions of Title 58.1 of the Code of Virginia applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder mutatis mutandis including, without limitation, provisions relating to tax liens, boards of equalization and the correction of erroneous assessments and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

- *These are general provisions to assure that the Special Assessment Act is coordinated with other existing statutes.*

§ 58.1-3244. Article not in conflict with requirements for preparation and use of true values. - Nothing in this article shall be construed to be in conflict with the requirements for preparation and use of true values where prescribed by the General Assembly for use in any fund distribution formula.

- *These are general provisions to assure that the Special Assessment Act is coordinated with other existing statutes.*

Part 2
Standards for Classification

STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO FOREST USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

Under the authority of § 58.1-3229 et seq. of the Code of Virginia, the State Forester adopts these Standards for Classification of Real Estate as Devoted to Forest Use Under the Special Assessment for Land Preservation to:

1. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population.

2. Conserve natural resources in forms that will prevent erosion.

3. Protect adequate and safe water-supplies.

4. Preserve scenic natural beauties and open spaces.

5. Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.

6. Promote a balanced economy and ease/lessen the pressures which force the conversion of real estate to more intensive uses . . .

According to the specific authority and responsibility conveyed by §§ 58.1-3230, 58.1-3233 and 58.1-3240, the State Forester is directed to provide a statement of the standards which shall be applied uniformly throughout the state to determine if real estate is devoted to forest use. After holding public hearings, pursuant to the Administrative Process Act (§ 96.14:1 et. seq. of the Code of Virginia) the statement shall be sent to the Commissioner of the Revenue and the duly appointed assessor of each locality adopting an ordinance in compliance with Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia.

§ 1. TECHNICAL STANDARDS FOR CLASSIFICATION OF REAL ESTATE DEVOTED TO FOREST USE.

A. The area must be a minimum of twenty acres and must meet the following standards to quality for forestry use.

B. PRODUCTIVE FOREST LAND. The real estate sought to be qualified shall be devoted to forest use which has existent on it, and well distributed, commercially valuable trees of any size sufficient to compose at least 40% normal stocking of forest trees, as shown in Table I . Land devoted to forest use that has been recently harvested of merchantable timber, is being regenerated into a new forest and not currently developed for nonforest use shall be eligible. To be qualified the land must be growing a commercial forest crop that is physically accessible for harvesting when mature.

C. NONPRODUCTIVE FOREST LAND. The land sought to be qualified is land devoted to forest use but which is not capable of growing a crop of industrial wood because of inaccessibility or adverse site conditions such as steep outcrops of rock, shallow soil on steep mountain sides, excessive steepness, heavily eroded areas, coastal beach sand, tidal marsh and other conditions which prohibit the growth and harvesting of a crop of trees suitable for commercial use.

D. DEFINITIONS

1. TREE. A tree is a single woody stem of a species presently or prospectively suitable for commercial industrial wood products.

2. STOCKING. Stocking is the number of trees three inches and larger in diameter breast high (d.b.h. - a point on the tree trunk outside bark 4.5 feet from ground level) required to equal a total basal area (b.a. is the area in square feet of a cross section of a tree at d.b.h.) of 75 square feet per acre, or where such trees are not present, there shall be present tree seedlings, or tree seedlings and trees in any combination sufficient to meet the 40% stocking set forth in Table 1.

Table 1
Minimum Number of Trees Required Per Acre to Determine
30 Square Feet of Tree Basal Area of 40%
Stocking for Classification as Forest Land

D.B.H. Range	D.B.H. in 2" Classes	Basal Area Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 Acre
up to 2.9"	**Seedlings**		**400**	**80**	**40**
3.0-4.9"	**4**	**0.0873**	**400**	**80**	**40**
5.0-6.9"	**6**	**0.1964**	**153**	**31**	**15**
7.0-8.9"	**8**	**0.3491**	**86**	**17**	**9**
9.0-10.9"	**10**	**0.5454**	**55**	**11**	**6**
11.0-12.9"	**12**	**0.7854**	**38**	**8**	**4**
13.0-14.9"	**14**	**1.0690**	**28**	**6**	**3**
15.0" +	**16+**	**1.3963**	**21**	**4**	**2**

NOTE *(a) Area 1/5 acre; circle, diameter 105'4"; square 93'4" per side.*
(b) Area 1/10 acre; circle, diameter 74'6"; square 66'.
(c) Number of seedlings present may qualify on a percentage basis; Example, 100 seedlings would be equivalent of 7.5 square feet of basal area (25% X 30 = 7.5).
(d) Seedlings per acre are based on total pine and hardwood stems. Where intensive pine management is practiced a minimum of 250 well distributed loblolly or white pine seedlings will qualify.

§ 2. CONSERVATION OF LAND RESOURCES, MANAGEMENT AND PRODUCTION, AND CERTIFICATION.

A.. To qualify for forest use, the owner shall certify that the real estate is being used in a planned program of timber management and soil conservation practices which are intended to:

1. Enhance the growth of commercially desirable species through generally accepted silvicultural practices.

2. Reduce or prevent soul erosion by Best Management Practices such as logging road layout and stabilization, stream side management zones, water diversion practices and other Best Management Practices which prevent soil erosion and improve water quality.

B. Certification of intent by the owner can be shown by:

1. A signed commitment to maintain and protect forest-land by documenting land-use objectives to include methods of resource management and soil and water protection or;
2. Submitting a plan prepared by a professional forester.

§ 3. OPINIONS.

Section 58.1-3240 of the Code of Virginia authorizes a local assessing officer to request an opinion from the State Forester determining whether a particular property meets the criteria for forest use. The request should be in writing describing the situation in question. Maps, photos or other pertinent information should accompany the request. The State Forester may hold a hearing or arrange for an onsite inspection by a Department official, the applicant and the local assessing officer. The State Forester will issue his opinion as quickly as possible after all necessary information has been received. An appeal of any opinion that does not comply with these standards may be taken as provided by § 58.1 -3240 of the Code of Virginia.

Effective date: January 1, 1989

James W. Garner
State Forester
Department of Forestry

STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO OPEN-SPACE USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW.

Under the authority of § 58.1-3229 et seq. of the Code of Virginia, the Director of the Department of Conservation and Historic Resources adopts these Standards for Classification of Real Estate As Devoted to Open-Space Use Under the Virginia Land Use Assessment Law to:

1. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural and forest products, and of open space within reach of concentrations of population.

2. Conserve natural resources in forms that will prevent erosion.

3. Protect adequate and safe water supplies.

4. Preserve scenic natural beauties and open spaces.

5. Promote proper land use planning and the orderly development of real estate for the accommodation of an expanding population.

6. Promote a balanced economy and ease pressures which force the conversion of real estate to more intensive uses.

According to the specific authority and responsibility conveyed by §§ 58.1-3230 and 58.1-3240 of the Code of Virginia, the Director of the Department of Conservation and Recreation is directed to provide a statement of the standards which shall be applied uniformly throughout the Commonwealth to determine if real estate is devoted to open-space uses. After holding public hearings, the statement shall be sent to the Commissioner of the Revenue and a duly appointed assessor of each locality adopting an ordinance in compliance with Article 4 of Chapter 32 of Title 58.1, of the Code of Virginia.

§ 1. GENERAL STANDARDS.

To qualify as an open-space use, real estate must meet the requirements of both this section and the specific standards contained in Section 2 of these regulations. The general standards are as follows.

A. Consistency with land use plan.

1. The open-space use of the property must be consistent with the land use plan of the county, city, or town which has been made and adopted officially in accordance with Article 4, Chapter 11, Title 15.1 of the Code of Virginia.

2. A land use consistent with the land use plan means a use that is consistent with areas or land use zones depicted on a map that is part of the land use plan, or that directly supports or is generally consistent with stated land uses, natural resources conservation or historic preservation objectives, goals or standards of the land use plan.

3. A property that is subject to a recorded perpetual conservation, historic or open-space easement held by any public body, or is part of an agricultural, a forestal or an agricultural and forestal district approved by local government, shall be considered to be consistent with the land use plan.

B. Minimum acreage.

1. Except as provided in subdivision B 2 of this section, real estate devoted to open-space use shall consist of a minimum of five acres.

2. If the governing body of any county, city or town has so prescribed by ordinance, real estate devoted to open space shall consist of a minimum of two acres when the real estate is:

a. Adjacent to a scenic river, a scenic highway, a Virginia byway or public property listed in the approved State Comprehensive Outdoor Recreation Plan, also known as the Virginia Outdoors Plan (the Virginia Outdoors Plan can be obtained from the Department of Conservation and Recreation at 203 Governor Street, Suite 302, Richmond, Virginia 23219); or

b. Located in a county, city or town having a density of population greater than 5,000 per square mile.

C. Other Requirements.

Real estate devoted to open-space shall be:

I. Within an agricultural, a forestal or an agricultural and forestal district entered into pursuant to Chapter 36 of Title 15.1 of the Code of Virginia;

2. Subject to a recorded perpetual easement that is held by a public body and that promotes the open-space use classification as defined in § 58.I-3230 of the Code of Virginia; or

3. Subject to a recorded commitment entered into by the landowner with the governing body in accordance with Section 3 of these regulations.

D. Opinions.

In determining whether a property meets the general and specific standards for open-space use, the local assessing officer may request an opinion from the Director of the Department of Conservation and Recreation under the provisions of Section 4 of these regulations.

§ 2. **Specific Standards**

The specific standards for determining whether real estate will qualify for special assessment based on open-space use are as follows. The term "land" includes water, submerged land, wetlands, marshes, and similar properties.

A. **Park or recreation use -** Lands that are provided or preserved for:

1. Any public, semi-public or privately-owned park, playground or similar recreational area, for public or community use, except any use operated with intent for profit. Examples:

- Parks, play areas, athletic fields, botanical gardens, fishing or skating ponds.
- Golf clubs, country clubs, swimming clubs, beach clubs, yacht clubs, scout camps.
- Fairgrounds.

2. Golf courses operated for profit as a public service and having the park-like characteristics normally associated with a country club.

3. Buildings shall not cover more than 10% of the site.

4.Commercial recreational or amusement places, such as driving ranges, miniature golf courses, pony rides, trap shoots, marinas, motor speedways, drag strips, amusement parks and the like, shall not qualify.

B. **Conservation of land or other natural resources -** Lands that are provided or preserved for forest preserves, bird or wildlife sanctuaries, watershed preserves, nature preserves, arboretums, marshes, swamps and similar natural areas.

C. **Floodways -** Lands that are provided or preserved for:

1.The passage or containment of waters, including the flood plains or valleys and side slopes of streams that are or may be subject to periodic or

occasional overflow, such as flood plains identified by engineering surveys by the U.S. Corps of Engineers or others, or by soil surveys or topographic maps. Floodways also include adjacent lands that should be reserved as additional channels for future floods due to increased runoffs.

2. Coastal lowlands, such as bays, estuaries or ocean shores, subject to inundation by storms or high tides.

3. Tidal and Non-tidal wetlands, such as swamps, bogs and marshes.

D. **Historic or Scenic Areas -** Lands that are provided or preserved for historic or scenic purposes are:

1. On the Virginia Landmarks Register or the National Register of Historic Places or contributing properties in an historic district listed in the Virginia Landmarks Register or the National Register of Historic Places. Information concerning properties on these Registers can be obtained from the Department of Conservation and Historic Resources.

2. Properties protected by scenic or open-space easements.

3. Places designated or recommended as "Scenic" by the Department of Conservation and Recreation, the Department of Transportation, the General Assembly or other State agency subject in each case to a specific area description provided by the designating agency.

E. **Assisting in the shaping of the character, direction and timing of community development, or for the public interest -** Lands that are officially planned or approved by the local governing body to be left in a relatively natural and undeveloped state and that are provided or preserved for the purpose of shaping the locality into neighborhoods and communities, identifying their boundaries, insulating incompatible uses from one another, directing growth, controlling the rate or timing of growth or otherwise serving the public interest as determined by the local governing body. Examples:

-Greenbelts, parkways and trail ways,
-Stream valleys,
-Forests and farmlands,
-Hilltops or hillsides,
-Mountaintops and mountainsides,
-Scenic vistas.

§ 3. STANDARDS FOR WRITTEN COMMITMENTS BY LANDOWNERS TO PRESERVE OPEN-SPACE LAND USE

The written commitment entered into by landowners for the local governing body to preserve open-space land use, pursuant to subdivision 3 of § 58.1-3233 of the Code of Virginia, shall conform substantially to the following form of agreement:

OPEN-SPACE USE AGREEMENT

This Agreement, made this ____ day of _____ 20

between_____

_____

_____, hereafter

called the Owner, and the [County, City or Town] of a political subdivision of the Commonwealth of Virginia, hereinafter called the [County, City or Town], recites and provides as follows:

RECITALS

1. The Owner is the owner of certain real estate, described below, hereinafter called the Property, and

2. The [County, City or Town] is the local governing body having real estate tax jurisdiction over the Property: and

3. The [County, City or Town] has determined:

A. That it is in the public interest that the Property should be provided or preserved for [Insert one or more of the following uses: park or recreational purposes; conservation of land; conservation of (Insert description of other natural resource); an historic area; a scenic area; assisting in the shaping of the character, direction and timing of community development; or other use which serves the public interest by the preservation of open-space land as provided in the land-use plan.]; and

B. That the Property meets the applicable criteria for real estate devoted to open-space use as prescribed in Article 4 (§ 58.1-3229 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia, and the standards for classifying such real estate prescribed by the Director of the Virginia Department of Conservation and Recreation; and

C. That the provisions of this agreement meet the requirements and standards prescribed under § 58.1-3233 of the Code of Virginia for recorded commitments by landowners not to change an open-space use to a nonqualifying use; and

4. The Owner is willing to make a written recorded commitment to preserve and protect the open-space uses of the Property during the term of this agreement in order for the Property to be taxed on the basis of a use assessment and the Owner has submitted an application for such taxation to the assessing officer of the [County, City or Town] pursuant to § 58.1-3234 of the Code of Virginia and [citation of local ordinance]; and

5. The [County, City or Town] is willing to extend the tax for the Property on the basis of a use assessment commencing with the next succeeding tax year and continuing for the term of this agreement, in consideration of the Owner's commitment to preserve and protect the open-space uses of the property, and on the condition that the Owner's application is satisfactory and that all other requirements of Article 4, Chapter 32, Title 58.1 of the Code of Virginia and [citation of local ordinance] are complied with.

NOW THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained the parties hereby covenant and agree as follows:

1. This agreement shall apply to all of the following described real estate: [lnsert property description]

2. The owner agrees that during the term of this agreement:

A. There shall be no change in the use or uses of the Property that exist as of the date of this agreement to any use that would not qualify as an open-space use.

B. There shall be no display of billboards, signs or other advertisements on the property, except to (I) state solely the name of the Owner and the address of the Property, (ii) advertise the sale or lease of the Property; (iii) advertise the sale of goods or services produced pursuant to the permitted use of the Property, or (iv) provide warnings. No sign shall exceed four feet by four feet.

C. There shall be no construction, placement or maintenance of any structure on the Property unless such structure is either:

(1) on the Property as of the date of this agreement; or

(2) related to and compatible with the open-space uses of the Property which this agreement is intended to protect or provide for.

D. There shall be no accumulations of trash, garbage, ashes, waste, junk, abandoned property or other unsightly or offensive material on the Property.

E. There shall be no filling, excavating, mining, drilling, removal of topsoil, sand, gravel, rock, minerals or other materials which alters the topography of the Property, except as required in the construction of permissible building, structures and features under this agreement.

F. There shall be no construction or placement of fences, screens, hedges, walls or other similar barriers which materially obstruct the public's view of scenic areas of the Property.

G. There shall be no removal or destruction of trees. shrubs, plants and other vegetation, except that the Owner may:

(1) engage in agricultural, horticultural or silvicultural activities, provided that there shall be no cutting of trees, other than selective cutting and salvage of dead or dying trees, within 100 feet of a scenic river, a scenic highway, a Virginia Byway or public property listed in the approved State Comprehensive Outdoor Recreation Plan (Virginia Outdoors Plan); and

(2) remove vegetation which constitutes a safety, a health or an ecological hazard.

*H. There shall be no alteration or manipulation of natural water courses, shores, marshes, swamps, wetlands or other water bodies, nor any activities or uses which adversely affect water quality, level or flow.

*I. On areas of the Property that are being provided or preserved for conservation of land, floodways or other natural resources, or that are to be left in a relatively natural or undeveloped state, there shall be no operation of dune buggies, all-terrain vehicles, motorcycles, motorbikes, snowmobiles or other motor vehicles, except to the extent necessary to inspect, protect or preserve the area,

J. There shall be no industrial or commercial activities conducted on the Property, except for the continuation of agricultural, horticultural or silvicultural activities; or activities that are conducted in a residence or an associated outbuilding such as a garage, smokehouse, small shop or similar structure which is permitted on the property.

K. There shall be no separation or split-off of lots, pieces or parcels from the Property. The Property may be sold or transferred during the term of this agreement only as the same entire parcel that is the subject of this agreement; provided, however, that the Owner may grant to a public body or bodies open-space, conservation or historic preservation easements which apply to all or part of the Property.

3. This agreement shall be effective upon acceptance by

the [County, City or Town]; provided, however, that the real estate tax for the Property shall not be extended on the basis of its use value until the next succeeding tax year following timely application by the Owner for use assessment and taxation in accordance with [citation of applicable local ordinance]. Thereafter, this agreement shall remain in effect for a term of [Insert a period of not less than 4 nor more than 10] consecutive years.

4. Nothing contained here in shall be construed as giving to the public a right to enter upon or to use the Property or any portion thereof, except as the Owner may otherwise allow, consistent with the provisions of this agreement.

5. The [County, City or Town] shall have the right at all reasonable times to enter the Property to determine whether the Owner is complying with the provisions of this agreement.

6. Nothing in this agreement shall be construed to create in the public or any member thereof a right to maintain a suit for any damages against the Owner for any violation of this agreement.

7. Nothing in the agreement shall be construed to permit the Owner to conduct any activity or to build or maintain any improvement which is otherwise prohibited by law.

8. If any provision of this agreement is determined to be invalid by a court of competent jurisdiction, the remainder of the agreement shall not be affected thereby.

9. The provisions of this agreement shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.

10. Words of one gender used herein shall include the other gender, and words in the singular shall include words in the plural, whenever the sense requires.

11. This agreement may be terminated in the manner provided in § 15.1-1513 of the Code of Virginia for withdrawal of land from an agricultural, a forestal or an agricultural an agricultural and forestal district.

12. Upon termination of this agreement, the Property shall thereafter be assessed and taxed at its fair market value, regardless of its actual use, unless the [County, City or Town] determines otherwise in accordance with applicable law.

13. Upon execution of this agreement, it shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of _____, Virginia, at the Owner's expense.

which does not comport with the standards set forth herein

14. NOTICE: WHEN THE OPEN-SPACE USE OR USES BY WHICH THE PROPERTY QUALIFIED FOR ASSESSMENT AND TAXATION ON THE BASIS OF USE CHANGES TO A NONQUALIFYING USE OR USES, OR WHEN THE ZONING FOR THE PROPERTY CHANGES TO A MORE INTENSIVE USE AT THE REQUEST OF THE OWNER, THE PROPERTY, OR SUCH PORTION OF THE PROPERTY WHICH NO LONGER QUALIFIES, SHALL BE SUBJECT TO ROLL-BACK TAXES IN ACCORDANCE WITH § 58.1-3237 OF THE CODE OF VIRGINIA THE OWNER SHALL BE SUBJECT TO ALL OF THE OBLIGATIONS AND LIABILITIES OF SAID CODE SECTION.

*Paragraphs H and I must be included in agreements for properties which are to be provided or preserved for natural areas left in undeveloped states, including floodways. These paragraphs are unnecessary for agreements for other types of land uses, such as for a park or a farm use.

_____(Seal)
Owner

[Name of City, County, Town)

by
___(Acknowledgments)

§ 4. OPINIONS

In cases of uncertainty, the local assessing officer may request an opinion from the Director of the Department of Conservation and Historic Resources as to whether a particular property meets the criteria for open-space classification. The procedure for obtaining such an opinion is as follows:

A. The local assessing officer shall address a letter to the Director, Department of Conservation and Historic Resources, 203 Governor St., Suite 302, Richmond, VA 23219, describing the particular use and situation and requesting an opinion as to whether or not it qualifies as an open space for the purpose of use value taxation. Such letter should be accompanied by exhibits such as land use maps, subdivision plats, open-space deeds or easements, applicable agricultural, forestal, historic district or other ordinances, if any, topographic maps, and photographs, sufficient to explain the situation adequately. The director may request additional information if needed.

B. The director may hold a hearing at which the applicant and others may present additional information.

C. The director will issue an opinion as quickly as possible after all necessary information has been received and any hearing completed. An appeal from any opinion may be taken as provided by § 58.1-3240 of the Code of

Virginia.

Certification

I hereby approve the final adoption of the amended Standards for the Classification of Real Estate as Devoted to Open Space Use under the Land Use Assessment Law as presented. I further certify the above standards as a true and correct copy.
Effective date: January 5, 1989

Signature

Name	B. C. Leynes, Jr.
Title	Director
Agency Name	Department of Conservation and Historic Resources
Date	November 16,1988

STANDARDS FOR CLASSIFICATION OF REAL ESTATE AS DEVOTED TO *AGRICULTURAL* USE AND TO *HORTICULTURAL* USE UNDER THE VIRGINIA LAND USE ASSESSMENT LAW

Under the authority of Article 4, Chapter 32, of Title 58.1, Section 58.1-3229, of the Code of Virginia, the Commissioner of Agriculture and Consumer Services adopts these Standards for Classification of Real Estate As Devoted to Agricultural Use and to Horticultural Use Under the Virginia Land Use Assessment Law to:

A. Encourage the proper use of real estate in order to assure a readily available source of agricultural, horticultural, and forest products, and of open space within reach of concentrations of population.

B. Conserve natural resources in forms that will prevent erosion.

C. Protect adequate and safe water supplies.

D. Preserve scenic natural beauties and open spaces.

E. Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population.

F. Promote a balanced economy and ease pressures which force the conversion of real estate to more intensive uses . . ."

According to the specific authority and responsibility conveyed by Sections 58.1 -3230 (a) and (b), 58.1 -3233 and 58.1 3240, the Commissioner of Agriculture and Consumer Services is directed to provide a statement of the standards which shall be applied uniformly throughout the state to determine if real estate is devoted to agricultural or horticultural uses. After holding public hearings, the statement shall be sent to the Commissioner of the Revenue and a duly appointed assessor of each locality adopting an ordinance in compliance with this article. The area must be a minimum of five acres and must meet all the following standards to qualify for agricultural or for horticultural use.

§ 1. Previous and Current Use, and Exception

A. Previous Use.

The real estate sought to be qualified must have been devoted, for at least five consecutive years previous, to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use including, but not limited to:

1. Aquaculture
2. Forage crops
3. Commercial sod and seed
4. Grains and feed crops
5. Tobacco, cotton, and peanuts
6. Dairy animals and dairy products
7. Poultry and poultry products
8. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of any or all such animals
9. Bees and apiary products
10. Commercial game animals or birds
11. Trees or timber products of such quantity and so spaced as to constitute a forest area meeting standards prescribed by the State Forester, if less than twenty acres, and produced incidental to other farm operations
12. Fruits and nuts
13. Vegetables
14. Nursery products and floral products.

If a tract of real estate is converted from nonproduction to agricultural or horticultural production, the tract may qualify without a five-year history of agricultural or horticultural use only if the change expands or replaces production enterprises existing, on other tracts of real estate owned by the applicant.

B. Current Use.

The real estate sought to be qualified must currently be devoted to the production for sale of plants or animals, or to the production for sale of plant or animal products useful to man, or devoted to another qualifying use including, but not limited to, the items in Section 1.A above; except that no real estate devoted to the production of trees or timber products may qualify unless:

1. The real estate is less than 20 acres.

2. The real estate meets the technical standards prescribed by the State Forester, and

3. The real estate is producing tree or timber products incidental to other farm operations.

C. Exceptions.

1. Conversions by farm operator - Non-Qualifying Real Estate.

   If a tract of real estate is converted from other uses or nonproduction to agricultural or horticultural production, the tract may qualify without a five-year history of agricultural or horticultural use when the change expands or replaces production enterprises existing on other tracts of real estate owned by the applicant, regardless of location.

2. Conversions by farm operator - Qualifying Real Estate.

   If a tract of real estate is converted from a qualifying use (forestry or open space) to agricultural or horticultural production, the tract may qualify without the five-year history of agricultural or horticultural use.

3. Government Action

   If a tract of real estate has previously qualified for agricultural use taxation is not devoted to agricultural or horticultural production because of governmental actions, the tract or portions shall be considered productive for that period of time.

§ 2. Conservation of Land Resources, Management and Production, and Certification.

A. Conservation of Land Resources.

To qualify for agricultural or horticultural use, the applicant shall certify that the real estate is being used in a planned program of soil management and soil conservation practices which is intended to:

1. Reduce or prevent soil erosion by best management practices such as terracing, cover cropping, strip cropping, no till planting, sodding waterways, diversion, water impoundments, and other best management practices which prevent soil erosion and improve water quality.

2. Maintain soil nutrients by the application of soil nutrients (organic and inorganic) needed to produce average yields of agricultural crops or as recommended by soil tests.

3. Control brush, woody growth, and noxious weeds on row crops, hay, and pasture by the use of herbicides, biological controls, cultivation, mowing, or other normal cultural practices.

B. Management and Production.

To qualify for agricultural or horticultural use, the applicant shall certify that the real estate is being used in a planned program of management and production of field crops, livestock, livestock products, poultry, poultry products, dairy, dairy products, aquaculture products, or horticultural products for sale.

Field crop production shall be primarily for commercial uses and the average crop yield per acre on each crop grown on the real estate during the immediate three years previous, shall be equal to at least one-half of the county (city) average for the past three years; except that the local government may prescribe lesser requirements when unusual circumstances prevail and such requirements are not realistic.

Livestock, dairy, poultry, or aquaculture production shall be primarily for commercial sale of livestock, dairy, poultry and aquaculture products. Livestock, dairy and poultry shall have a minimum of twelve animal unit months of commercial livestock or poultry per five acres of open land in the previous year. One animal unit to be one cow, one horse, five sheep, five swine, one hundred chickens, sixty-six turkeys, one hundred other fowl. (An animal unit month means one mature cow or the equivalent on five acres of land for one month; therefore, twelve animal unit months means the maintenance of one mature animal on each five acres for twelve months, or any combination of mature animals and months that would equal twelve animal unit months such as three mature animals for four months, four mature animals for three months, two mature animals for six months, etc.)

Aquaculture production shall be primarily for commercial sale of freshwater fish and shellfish under controlled conditions for food.

Horticultural production includes nursery, greenhouse,

cut flowers, plant materials, orchards, vineyards and small fruit products.
Timber production, in addition to crop, livestock, dairy, poultry, aquaculture, and horticultural production on the real estate must meet the standards prescribed by the State Forester for the forest areas and will be assessed at use value for forestry purposes.

Certification Procedures.

A. Documentation.

The commissioner of revenue or the local assessing officer may require the applicant to certify that the real estate is devoted to the bona fide production for sale of agricultural and horticultural products being used in a planned program of soil management and a planned program of management and production of field crops, livestock dairy, poultry, aquaculture, horticultural crops, and timber products. The commissioner of revenue or local assessing officer may find one of the following documents useful in making his determination:

1. The assigned USDA/ASCS farm number, and evidence of participating in a federal farm program, or

2. Federal tax forms (1040F) Farm Expenses and Income, (4835) Farm Rental Income and Expenses, or (1040E) Cash Rent for Agricultural Land, or

*3. A Conservation Farm Management Plan prepared by a professional.

**4. Gross Sales averaging more than $1,000 annually over the previous three years.

*The 1985 Food Policy Act (Farm Bill) required farmers participating in federal farm programs to have a farm conservation plan proposed by the USDA Soil Conservations Service by 1990 and fully implemented by 1995.

**The Agriculture Census defines a farm as a place where agricultural products were sold or normally would have been sold annually averaging more than $1,000.

B. Interpretation of Standards.

In cases of uncertainty on the part of the commissioner of revenue or the local assessing officer, the law authorizes him to request an opinion from the Commissioner of Agriculture and Consumer Services as to whether a particular property meets the criteria for agricultural or horticultural classification. The procedure for obtaining such an opinion is as follows:

1. The commission of revenue or the local assessing officer shall address a letter to the Commissioner, Virginia Department of Agriculture and Consumer Services, PO. Box 1163, Richmond, Virginia 23209, describing the use and situation, and requesting an opinion of whether (the real estate) qualifies as agricultural or horticultural real estate for the purpose of use-value taxation. The letter should include the following:

   a. Owner's name and address.

   b. Operator's name and address.

   c. Total number of acres, acres in crops, acres in pastures, acres in soil conservation programs (Agricultural Stabilization and Conservation Service, Soil Conservation Service, Virginia Department of Conservation and Historic Resources programs) and acres in forest.

   d. If more than one tract of real estate, the number of acres in each tract and whether the tracts are contiguous.

   e. A copy of application for land use assessment taxation.

2. The Commissioner may request additional information, if needed, directly from the applicant; or he may hold a hearing at which the applicant and others may present additional information.

3. The Commissioner will issue an opinion as soon as possible after all necessary information has been received. An appeal of any opinion which does not comply with these standards may be made as provided by Section 58.1-3240, Chapter 32 of Title 58.1, Article 4 of the Code of Virginia.

Effective November 3, 1988
Dr. Clinton V. Turner
Commissioner
Department of Agriculture
and Consumer Services

Part 3
Attorney General's Opinions

September 21, 1990

THE HONORABLE JAMES W. HOPPER
County Attorney for Powhatan County

You ask whether the board of supervisors of a county may direct the officer assessing real estate in the county for tax purposes to assess according to the property's existing use, rather than its highest and best use. You also ask whether a board of supervisors may enact an ordinance designating all private residences in a certain part of the county as "real estate devoted to agricultural use" in order to make those residential properties eligible for use value assessment and taxation under a county ordinance adopted pursuant to ээ58.1-3229 through 58.1-3244 of the Code of Virginia.

I. Applicable Constitutional and Statutory Provisions

Article X, 2 of the Constitution of Virginia (1971) establishes a general requirement that "[a]ll assessments of real estate and tangible personal property shall be at their fair market value." The same section of the Constitution further permits the General Assembly to "define and classify real estate devoted to agricultural, horticultural, forest or open space uses," to declare that the public interest requires preservation of those uses and to authorize local governments, within prescribed limits, to allow relief from, or deferral of, portions of the tax that would be payable on such real estate if it were not classified and valued on the basis of such use.

Section 58.1-3201 provides that "all real estate, except that exempted by law, shall be subject to annual taxation,' and requires that all assessments of real estate be at "100 percent fair market value"

Acting pursuant to Article X, 2, the General Assembly has adopted §§ 58.1-3229 through 58.1-3244, authorizing and detailing procedures for local use value assessment and taxation of the constitutionally permitted classes of property.

Section 58.1-3230 specifies that

'[r]eal estate devoted to agricultural use' shall mean real estate devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services or devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

II. Board of Supervisors May Not Order Assessments of Real Estate at Less than Fair Market Value

The answer to your first inquiry is dictated by the constitutional and statutory requirement for uniform assessments at 100 percent fair market value. Va. Const. Art. X, 2; Va. Code Ann. § 58.1-3201. Fair market value is the price a property will bring when it is offered for sale by a willing seller who is under no compulsion to sell, and if bought by a willing buyer who is under no necessity of having the property. *Woman 's Club v. City of Richmond*, 199 Va. 734, 737, 101 S.E.2d 571, 574 (1958). All uses to which the property may be adapted are to be considered in determining the value, not only the current use. *Id*. at 738, 101 S.E.2d at 574. The taxing authority must assess in a manner that avoids "all disuniformity reasonably avoidable" *Perkins v. Albemarle*, 214 Va 416, 418, 200 S.E.2d 566, 568 (1973). Fair market value, not current use, is the constitutionally mandated criterion. *See City of Waynesboro v. Keiser*, 213 Va. 229, 234, 191 S.E.2d 196, 199 (1972); see also 1987-1988 Att'y Gen. Ann. Rep 534.

Any directive by a board of supervisors that certain property should be assessed only on the basis of its existing use manifestly would result in the assessing officer's having to disregard the higher values that some properties would bring if sold by a willing seller and bought by a willing buyer for some higher category of lawfully permitted use. Based on the cases discussed above, I am of the opinion that Article X, 2 and § 58.1-3201 prohibit a board of supervisors from enacting such a directive, except as provided for agricultural, horticultural, forestal and open space use value assessments under §§ 58.1-3229 through 58.1-3244.

III. Board of Supervisors May Not Classify All Residential Property in Designated Area as Agricultural to Make Property Eligible for Use Value Assessments

As discussed above, a board of supervisors may make agricultural property eligible for use value assessment. In doing so, however, the board must adhere to the requirements set forth in §§ 58.1-3229 through 58.1-3244.

The definition contained in § 58.1-3230 makes it clear that, to be eligible for assessment based on agricultural use value, a property must actually be in use for the bona fide production of agricultural products for sale, or be withheld from productive use under a federal soil conservation program. To be deemed agricultural the use of the property must meet uniform standards adopted by the Commissioner of Agriculture and Consumer Services. A board of supervisors obviously may not ignore the plain language of this statutory definition and adopt its own inconsistent definition that includes properties not actually being put to agricultural use. *See* 1989 Att'y Gen. Ann. Rep 113, 115.

Any such designation of residential properties that was limited solely to a particular area of the county would, moreover, violate the requirement that assessments be uniform on all property of the same classification within the county. *See Perkins v. Albemarle*, 214 Va. at 418-19, 200 S.E.2d at 568-69.

It is my opinion, therefore, that a board of supervisors may not adopt an ordinance of the nature described in your second inquiry.

February 7, 1990

THE HONORABLE JOSEPH RIGO
Commissioner of the Revenue for York County

You ask several questions arising from the subdivision of a parcel of land into five smaller parcels. The original parcel qualified for land-use taxation.[1]

I. Facts

The original parcel of land owned by *A* had been assessed since 1958 as 50.49 acres, measured by metes and bounds in the original conveyance. You state that the parcel had been in land-use taxation since the enactment of this program in York County. In 1978, *A* deeded a portion of his parcel to his son, *B*. In this conveyance, *A* thought he was transferring a ten-acre parcel to *B. A* survey later measured *B's* parcel at 22.79 acres, however, and not ten acres. When *B* recorded this plat of survey in 1983, your office corrected *B's*

assessment in the land book to be 22.79 acres, rather than ten acres. *A's* remaining parcel was not surveyed, and no plat has been recorded on the remainder. *A's* real estate assessment has not changed.

In 1987, *A* deeded 15.04 surveyed acres from the original parcel of land to another son, *C.* *A* then assumed his unsurveyed remainder parcel consisted of 25.45 acres, as assessed by your office. *A* deeded the residual property in three parcels to his daughters *D, E* and F. When those parcels were surveyed, however, they totaled only 13.57 acres, not 25 45, with no land remaining, and each individual parcel was less than five acres.

Based on these facts, you ask whether (I) *A's* unsurveyed remainder parcel should have been reduced on the land book by the additional 12.79 acres added to *B's* parcel; (2) roll-back taxes are precipitated by A=s transfer of the parcels to *D, E* and *F*; and (3) *A,* upon his written application, is entitled to a refund pursuant to ∋58.1-3990 of the Code of Virginia for taxes paid on acreage previously conveyed.

II. Applicable Statutes

Section 58.1-3281 requires the commissioner of the revenue to ascertain all the real estate and the person to whom it is chargeable with taxes an January 1 of each year. Section 58.1-3313 requires the commissioner of the revenue to correct mistakes made in land book entries.

Section 58.1-3241 requires that individual lots split off from qualifying parcels shall meet the minimum acreage requirement to qualify for land-use taxation or be subject to roll-back taxes. Section 58.1-3241(A) provides:

> Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article [Article 4, Chapter 32 of Title 58.1], either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable... .
>
> No subdivision of property which results in parcels which meet the minimum acreage requirements of this article, and which the owner attests is for one or more of the purposes set forth in § 58.1-3230, shall be subject to the provisions of this subsection.

Section 58.1-3233 details the duties of a commissioner of revenue in the assessment of real estate for land-use taxation. The minimum five-acre requirement is described in § 58.1-3233(2).

Section 58.1-3990 authorizes local governing bodies by ordinance to provide for refunds of local taxes erroneously paid and provides, in part:

> If such ordinance be passed, and the commissioner of the revenue is satisfied that he has erroneously assessed any applicant with any local taxes, he shall certify to the tax collecting officer the amount erroneously assessed . . . .
>
> * * *
>
> No refund shall be made in any case when application therefor was made more than three years after the last day of the tax year for which such taxes were assessed . . . .

III. Remainder of *A's* Unsurveyed Parcel Should Be Reduced by Additional Acreage Added to *B's* Parcel

You first ask whether *A's* unsurveyed remainder parcel should have been reduced on the land book by the additional 12.79 acres shown to be part of *B's* parcel by the survey and the plat recorded in 1983. Section 58.1-3281 requires a commissioner of the revenue to determine ownership of real estate on January 1 of each year.

In this instance, *A's* original parcel had been assessed since 1958 on 50.49 acres. The survey of the parcel *A* conveyed to son *B* in 1978 showed the new parcel to include 22.79 acres rather than the approximately ten acres deeded by metes and bounds. Prior Opinions of this Office conclude that a commissioner of the revenue should correct acreage figures shown in the land book upon receiving information that the existing land book figures are incorrect. See Att'y Gen. Ann. Rep: 1985-1986 at 298; 1982-1983 at 105; 1972-1973 at 85.

The best information available in the facts you present demonstrates that 22.79 acres was conveyed from the original tract of 50.49 acres. It is my opinion that § 58.1-3313 requires a commissioner of the revenue to correct acreage figures shown in the land book to reflect the best information available. It is further my opinion, therefore, that *A's* unsurveyed remainder parcel should have been reduced on the land book by the additional 12.79 acres shown to be part of *B's* parcel by the plat recorded in 1983.

IV. Individual Lots Must Meet Acreage Requirement for Eligibility for Land-Use Taxation

You next ask whether *A's* conveyance of the three residual parcels to children *D, E* and *F* subjects these parcels to liability for roll-back taxes.

Each individual lot or parcel separated from a parcel that has been assessed under land-use taxation must satisfy the minimum acreage requirements of § 58.1-3233 to avoid subjecting the separated lot or parcel to liability for roll-back taxes. See § 58.1-3241(A). Prior Opinions of this Office consistently conclude that the separation of lots that do not meet the minimum acreage requirements triggers the application of roll-back taxes. Att'y Gen. Ann. Rep.: 1986-1987 at 306; 1985-1986 at 305; 1982-1983 at 545; 1979-1980 at 339.

In the facts you present, none of the three parcels conveyed by *A* to children *D, E* and *F* contains the required five acres. It is my opinion, therefore, that *A's* conveyance of the three residual parcels to *D, E* and *F* subjects each of these three parcels to liability for roll-back taxes.

V. Taxpayer May Apply for Refund of Taxes Erroneously Paid Due to Error in Number of Acres Assessed

Your final question is whether *A*, upon his written application, is entitled to a refund pursuant to § 58.1-3990 for taxes paid on acreage previously conveyed. I assume that the jurisdiction

you serve has enacted an ordinance pursuant to § 58.1-3990 to provide for refunds of local taxes erroneously paid. Taxes assessed against, and paid by, *A* on acreage previously conveyed would constitute an erroneous assessment and payment. It is my opinion, therefore, that upon application of *A*, refunds would be due him for taxes paid on that acreage, subject to the applicable three-year statute of limitations on such refunds.

VI. Summary

To summarize, it is my opinion in the facts you present that:

1. *A's* unsurveyed remainder parcel should be reduced in the land book by the additional acreage added to *B's* parcel by survey;

2. Roll-back taxes are due on the parcels transferred to *D, E* and *F* because the individual lots do not meet the minimum acreage requirement for land-use taxation; and

3. *A* is entitled to a refund for the applicable three-year limitation period under an ordinance passed pursuant to § 58.1-3990 for taxes erroneously assessed and paid on acreage previously conveyed.

VIRGINIA's statutes concerning "Special Assessment for Land Preservation" are detailed in Va. Code Ann. § 58.1-3229 to 58.1-3244.

March 16, 1989

THE HONORABLE BENJAMIN L. PINCKARD
Commissioner of the Revenue for Franklin County

You ask whether contiguous parcels of real estate shown on a recorded plat may be combined to form tracts that contain at least twenty acres devoted to forest use and, thereby, be eligible for use value assessment.

I. Facts

You provide two recorded plats that divide single tracts of land into multiple parcels, each of which is larger than five acres. You state that the division of property into lots greater than five acres in area does not constitute a subdivision under the county's subdivision ordinance. The plats, therefore, did not require the approval of the county subdivision agent prior to their recordation.

II. Applicable Statutes

Article 4, Ch.32 of Tit.58.1, §§ 58.1-3229 through 58.1-3244 of the Code of Virginia, provides for the use value assessment of real property to encourage the preservation of land for agricultural, horticultural, forest and open space uses. Section 58.1-3233(2) requires that property devoted to forest use consist of at least twenty acres to qualify for use value assessment. Section 58.1-3233(2) further provides that "[t]he minimum acreage requirements for special classifications of real estate shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots titled in the same ownership. For purposes of this section, properties separated only by a public right of way are considered contiguous."[1]

Article 7, Ch. 11 of Tit. 15.1, §§ 15.1-465 through 15.1-485 provides for the orderly subdivision of land in Virginia localities. Section 15.1-465 requires that Virginia localities adopt a subdivision ordinance. Section 15.1-466 generally details the authorized provisions for local subdivision ordinances. Section 15.1-430(1) defines the term "subdivision" as follows:

> '*Subdivision*,' unless otherwise defined in a local ordinance adopted pursuant to § 15.1-465, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided and solely for the purpose of recordation of any single division of land into two lots or parcels, a plat of such division shall be submitted for approval in accordance with § 15.1-475. The subdivision of property must be accomplished in compliance with the local subdivision ordinance. See §§ 15.1-473 and 15.1-475.

III. Parcels Shown on Plat of Division Not Subject to Local Subdivision Ordinance and, Remaining Under Common Ownership, May be Combined to Satisfy Minimum Acreage Requirements

A prior Opinion of this Office concludes that § 58.1-3233(2) authorizes the combination of contiguous parcels of real estate for the purpose of satisfying the minimum acreage requirement of this statute only when the contiguous parcels are titled in the same ownership. *See* Opinion to Patrick J. Morgan, County Attorney for New Kent County, dated October 27,1988 (copy enclosed). *Compare* 1986-1987 Att'y Gen. Ann. Rep.306 (prior Opinion rendered before 1988 amendment to § 58.1-3233(2) concluding that landowner may not combine recorded subdivision lots to qualify for land use taxation). Recorded subdivision lots, whether under common ownership or separately owned, may not be combined to satisfy the minimum acreage requirements. *Id.*

I assume, therefore, for purposes of this Opinion, that the separate parcels shown on the plats you present remain under common ownership. If the resulting parcels are not under common ownership, the contiguous parcels may not be combined in any event to satisfy the minimum acreage requirement. *See* § 58.1-3233(2). The question presented by your inquiry, therefore, is whether the reference to "recorded subdivision lots" in § 58.1-3233(2) refers to a subdivision plat recorded under a subdivision ordinance or to any division of a tract of land.

The primary object of statutory construction is to ascertain and give effect to legislative intent. *See Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983)*. The purpose of a subdivision ordinance is "to assure the orderly subdivision of land and its development" *See* § 15.1-465. Among the concerns addressed by subdivision ordinances are the coordination of existing and planned streets, the provision of drainage, water, and sewerage systems, and the preservation of critical slopes. *See* § 15.1-466(A). *See also* 1986-1987 Att'y Gen. Ann. Rep. 121, 123. Section 15.1-430(1) defines the term "subdivision" but authorizes local governments to adopt a definition of "subdivision" that differs from the statutory definition based on existing local conditions. *See also Board of Supervisors v. Land Company, 204 Va. 380, 131, S.E.2d 290 (1963).*

The purposes of the use value assessment is to create a financial incentive to encourage the preservation and proper use of real estate devoted to agricultural, horticultural, forest

and open space uses. *See* § 58.1-3229. The minimum acreage requirements of § 58.1-3233(2) manifestly are intended to limit eligibility for use value assessment to tracts of sufficient size to contribute to the overall goal of preserving valuable agricultural, horticultural, forest and open space areas. The evident purpose of the 1988 amendment to § 58.1-3233(2) was to permit a property owner to combine contiguous parcels he owns to satisfy the minimum acreage requirements.

If a property owner who has combined contiguous parcels for purposes of use value assessment subsequently transfers title to one of these parcels and the remaining parcel or parcels do not meet the minimum eligibility requirements of § 58.1-3233(2), the property owner would be subject to roll-back taxes pursuant to § 58.1-3241. If an existing tract of land is divided into large parcels that are not subject to the county subdivision ordinance and the resulting parcels remain under common ownership, the eligibility of the resulting combined parcels for use value assessment is consistent with the purpose of preserving the property for the protected uses. *Id*. On the other hand, the division of a tract under the subdivision ordinance contemplates the sale of the parcels to multiple owners.

Considering the purposes of both the use value assessment statutes and the subdivision enabling statutes, therefore, it is my opinion that the reference to recorded subdivision lots in § 58.1-3233(2) refers to a subdivision plat recorded under the local subdivision ordinance. It is further my opinion, therefore, that parcels resulting from a plat not subject to the local subdivision ordinance may be combined to satisfy the minimum acreage requirements if the resulting parcels remain under common ownership.

'*See Ch. 462,1988 Va. Acts 575, 576.*

July 10, 1987

THE HONORABLE JACK L. SETLIFF
Commissioner of the Revenue for the City of Danville

You ask two questions concerning land-use assessments. You ask first whether the notice of change in assessment required by § 58.1-3330 of the Code of Virginia is required when land-use assessment values are adjusted in conjunction with a general reassessment. You also ask whether an aggrieved taxpayer may apply to the board of equalization for review of a land-use assessment under § 58.1-3350.

Notice Required When Land-Use Assessment Values Adjusted

Section 58.1-3330(A) is applicable to your first question and provides, in pertinent part, that

> [w]henever in any county, city or town *there is a reassessment of real estate, or any change in the assessed value of any real estate, notice shall be given* by mail directly to each property owner, as shown by the land books of the county, city or town whose assessment has been changed. (Emphasis added.)

In addition, § 58.1-3243, found in Art. 4, Ch. 32 of Title 58.1, which deals with land-use assessments, provides, in pertinent part, that

> *[t]he provisions of Title 58.1 applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder* mutatis mutandis including, without limitation, provisions relating to tax liens, boards of equalization and the correction of erroneous assessments. (Emphasis added.)

The phrase, "assessments and taxation hereunder" in § 58.1-3243 refers to land-use assessment and taxation under Art. 4. Based on these statutes, it is my opinion that the notice of change in assessment required by § 58.1-3330 is required when land-use assessment values are adjusted in conjunction with a general reassessment.

Land-Use Assessment May Be Appealed to Board of Equalization

The answer to your second inquiry is also found in § 58.1.3243, as quoted above, and in § 58.1-3350. The latter statute provides that "[a]ny person aggrieved by *any assessment under this chapter* may apply for relief to the board of assessors, or if none, to the board of equalization created under Article 14 (§ 58.1-3370 et seq.) of this, chapter." (Emphasis added.) The "chapter" referred to in § 58.1-3350 is Ch. 32, which includes Art. 4, dealing with land-use assessments. Based on the above, it is my opinion that an aggrieved taxpayer may apply to the board of equalization for review of a land-use assessment as provided by § 58.1 -3350.

March 16,1987

THE HONORABLE MAYO K. GRAVATT
Commonwealth's Attorney for Nottoway County

You asked two questions concerning the availability of land use taxation for parcels located in a subdivision. Specifically, you ask whether (1) a landowner may combine a number of lots in a subdivision to qualify for land use taxation; and (2) each individual lot in the subdivision must meet acreage and other requirements for determination of eligibility for this taxation.

Facts

A large parcel of land was subdivided into lots ranging in size from one-third of an acre to 20 acres. The subdivision was recorded in 1950. Approximately one-third of the lots have been sold, and 10 homes built. The remainder of the lots consist primarily of standing timber. A previous commissioner of the revenue allowed the subdivision lots to be assessed together and be placed in land use taxation.

Applicable Statutes

Section 58.1-3233 states that local assessing officers are to make certain determinations before real estate is assessed. The section further provides that real estate devoted to an open-space use must consist of a minimum of 5 acres.

Section 58.1-3285 is also relevant to your inquiry and provides, in part:

> Whenever a tract of land is subdivided into lots under the provisions of law and plats thereof are recorded each lot in such subdivision shall be assessed and shown separately upon the land books, as required by law.

Section 58.1-3241 governs the taxation of a lot which has been separated from a parcel previously assessed under land use taxation and provides, in part, as follows:

A. Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed *real estate, shall subject the real estate so separated to liability or the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other condition of this article as may be applicable*. Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for roll-back taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article. (Emphasis added.)

The roll-back tax provisions of § 58.1-3237 also apply when a change in the use of the real estate occurs. That statute states, in part:

> A. When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes to a nonqualifying use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes Such additional taxes shall only be assessed against that portion of such real estate which no longer qualifies for assessment and taxation on the basis of use. If in the tax year in which the change of use occurs, the real estate was not valued, assessed and taxed under such ordinance, the real estate or portion thereof shall be subject to roll-back taxes for such of the five years immediately preceding in which the real estate was valued, assessed and taxed under such ordinance.

Conclusion: Individual Lots May Not Be Combined to Qualify for Land Use Taxation

Based on the above statutes, it is my opinion that a landowner may not combine subdivision lots for the purpose of qualifying for land use taxation. The commissioner of the revenue, or some other local assessing officer, must determine whether each parcel meets the minimum 5-acre requirement to qualify for such taxation. If a particular parcel consists of 5 acres or more, it may qualify. Any parcel which does not meet either the use requirement or the minimum acreage requirement is subject to roll-back taxes under §§ 58.1-3237 and 58.1-3241.

(Ed. Note: See amendments to the Code of Virginia since this opinion.)

November 13, 1985

THE HONORABLE CATHERINE V. ASHBY
Commissioner of the Revenue for Loudoun County

This is in reply to your inquiry concerning Art.4, Ch. 32 of Title 58.1 of the Code of Virginia, § 58.1-3229 et seq., which relates to special assessment for land preservation. Section 58.1-3231 authorizes any county, city or town which has adopted a land-use plan to adopt an ordinance to provide for the use value assessment and taxation of certain real estate. Section 58.1-3235 provides for the removal of land from the special assessment program for failure to pay delinquent taxes. You point out that taxpayers participating in the program must pay the 1984 taxes by November 1, 1985, or the treasurer must notify the commissioner of revenue to remove the parcel from the program. You ask for which under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of *such* years (1984, 1985 or 1986) removal is effective when a parcel of land is removed from the use value assessment and taxation program.

Section 58.1-3235 reads as follows:

> Alf on June 1 of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this article are delinquent, the appropriate county, city or town treasurer shall forthwith send notice of that fact and the general provisions of this section to the property owner by first-class mail. If after the notice has been sent, such delinquent taxes remain unpaid on November 1, the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program"

At the same time that § 58-769.8:1, the antecedent statute § 58.1-3235, was enacted, a reference to ɔ58-769.8:1 was inserted in the last paragraph of § 58.769.8, the antecedent statute to § 58.1-3234. *See* Ch. 508, Acts of Assembly of 1980. The last paragraph of § 58.1-3234 states that "continuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continued payment of taxes as referred to in § 58.1-3235." It is a well settled rule of statutory construction that statutes relating to the same subject which were enacted by the General Assembly at the same time must be considered and construed together. *See South Norfolk v. Norfolk*, 190 Va. 591,58 S.E.2d 32 (1950).

It is clear from reading the above quoted portions of §§ 58.1-3234 and 58.1-3235 that the General Assembly intended removal from the program for delinquent taxes to be prospective only. "Continuation" in the land use program is conditioned upon the continued payment of property taxes. Use of the word "continuation" implies the possibility of future participation if conditions are met. "Continuation" does not imply any action with respect to past years.

Section 58.1-3237 sets forth the circumstances under which assessment for roll-back taxes would be required. A roll-back assessment would be, in effect, a retroactive removal from the land use assessment program. Failure to pay delinquent taxes is not mentioned in § 58.1-3237 as circumstance which would trigger such roll-back taxes.

Based on the foregoing, it is my opinion that if 1984 real estate taxes are not paid by November 1, 1985, then the commissioner of the revenue should remove the parcel from participation in the use value assessment and taxation program for the year 1986. The landowner thereafter may apply and be reinstated in the program if all prior delinquent taxes and applicable penalties and interest are paid and he submits a new application to the local assessing officer within the time limits established by § 58.1-3234. *See* 1983-1984 Report of the Attorney General at 368.

October 8, 1985

THE HONORABLE ROBERT H. BURNS
Commissioner of the Revenue for Tazewell County

You ask whether a commissioner of the revenue may remove an entire 150-acre tract from participation in a county use value assessment and taxation program adopted under

Art.4 of Ch. 32, Title 58.1 of the Code of Virginia, § 58.1 -3229 et seq.[1] following the failure of the landowner to report the conveyance and change in use of a 0.601-acre portion of the tract within the 60-day period allowed for such reports by the local land use ordinance.

Section 58.1-3241 provides, in pertinent part, as follows:

> *"Separation or split-off of lots,* pieces or parcels of land from the real estate which is being valued, assessed and taxed under an ordinance adopted pursuant to this article, either by conveyance or other action of the owner of such real estate, shall subject the real estate so separated to liability for the roll-back taxes applicable thereto, but shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and such other conditions of this article as may be applicable. Such separation or split-off of lots shall not impair the right of the remaining real estate to continuance of such valuation, assessment and taxation without liability for rollback taxes, provided it meets the minimum acreage requirements and other applicable conditions of this article" (Emphasis added.)

The conveyance in question results in a 149.399-acre parcel and a split-off lot of 0.601 acre. The 0.601-acre tract does not meet the minimum acreage requirements of § 58.1-3233,[2] and, therefore, it does not qualify for future participation in the land use assessment program, regardless of whether or when the change is reported to you. The split-off lot also is subject to roll-back taxes for which the grantor, in this case, is liable. *See* 1982-1983 Report of the Attorney General at 545; 1979-1980 Report of the Attorney General at 339. Failure of the grantor to report the split-off in accordance with § 58.1-3237(C) will not prevent the imposition of roll-back taxes, penalties and interest. *See* § 58.1-3238.

The remaining 149.399-acre tract meets minimum acreage requirements and has experienced no change in use. The emphasized language in the quoted provisions of § 58.1-3241 makes it clear that the split-off of the 0.601-acre parcel does not, in and of itself, cause the 149.399-acre tract to lose its eligibility for valuation, assessment and taxation under the land use ordinance with no liability for roll-back taxes. Thus the 149.399-acre tract would remain eligible for land use taxation during the year in which the split-off took place, assuming that this tract also meets other applicable conditions for continued eligibility. One such condition is that "(a)n application shall be submitted *whenever* the use of acreage of such land previously approved *changes* . . ." Section 58.1 -3234. (Emphasis added.) The land use statutes do not fix a time for submission of an application "whenever" use of acreage changes, separate from the normal application times provided in § 58.1-3234. Failure to submit such an application would have no effect, therefore, upon the eligibility of the 149.399-acre tract for continued land use taxation in the year in which the split-off occurred.

Eligibility for future years would be governed by compliance with the provisions of the ordinance enacted within the terms of ∋58.1-3234, in order to reenroll the 149.399-acre tract. Pursuant to § 58.1-3234, an application for reenrollment must be submitted:

> "(1) At least sixty days preceding the tax year for which such taxation is sought.
> (2) In any year in which a general reassessment is being made the property owner may submit such application until thirty days have elapsed after his notice of increase in assessment is mailed in accordance with ∋58.1-3330, or sixty days preceding the tax year, whichever is later; or
> (3) In any locality which has adopted a fiscal tax year under Chapter 30 of this Subtitle III, but continues to assess as of January 2, such application must be submitted for any year at least sixty days preceding the effective date of the assessment for such year"

In § 2(a) of the Tazewell County ordinance, the county adopted the times specified in former § 58-769.8, which has been reenacted as § 58.1-3234, for submitting the application. Thus, if the county assessment date is January 1, the taxpayer has until November 2[3] to submit an application for reenrollment in the land use assessment program.

The requirement for reporting changes in use or acreage within sixty days of the change is only relevant for purposes of the 0.601-acre lot's roll-back tax liability under §§ 58.1-3237 and 58.1-3241. Failure to report a change of use of the 0.601-acre lot within sixty days of that change of use does not affect a determination of future participation in the land use assessment program for the 149.399-acre tract, so long as other conditions are met. Failure to report a change in use within sixty days of the change does subject the taxpayer to penalties and interest on the roll-back tax as may be provided by ordinance. *See* § 58.1-3238. Section 7(a) of the Tazewell County ordinance provides for such penalties and interest.

Based on the foregoing, it is my opinion that the 0.601-acre tract should be removed from future participation in the land use program because it fails to meet minimum acreage requirements, and roll-back taxes should be assessed. With respect to the remaining 149.399-acre tract, if the taxpayer submits an application showing the change in acreage within the applicable time specified in § 58.1-3234, and no other change in acreage or use occurs, then you should allow that tract to remain in the land use assessment program not only as to the year in which the split-off occurred but for future years in which eligibility is maintained.

---

[1] *Section 58.1-3231 authorizes any county, city or town which has adopted a land use plan to adopt an ordinance to provide for use value assessment, in accord with Art. 4, of real estate classified in § 58.1-3230, which establishes and defines classifications of real estate devoted to "agricultural use," "horticultural use," "forest use," and "open-space use."*

[2] *Section 58.1-3233 provides that prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to Art. 4, the local assessing officer must determine,* ***inter alia****, "that real estate devoted (I) agricultural or horticultural use consists of a minimum of 5 acres, (ii) forest use consists of a minimum of 20 acres and (iii) open-space use consists of a minimum of 5 acres..."*

[3] ***See*** *§§ 58.1-8 and 58.1-9 for due dates which fall on a Saturday, Sunday or legal holiday, and filing returns by mail.*

April 3, 1985

THE HONORABLE FRANK W. NOLEN
Member, Senate of Virginia

You have asked whether a locality can void a use value assessment application authorized by §§ 58.1-3229 *et seq*. of the Code of Virginia under the following circumstances.

The taxpayer had timely applied for and participated in the

land use assessment program with respect to a certain parcel of land for tax years prior to tax year 1984. In February 1983, a deed was recorded by which the taxpayer land use assessment for tax year 1984. In response to the question, "Has there been any change in acreage or ownership by the recording since January 1, of this year?" the taxpayer responded "No." [1] Before the January 1, 1984 assessment date, the commissioner of the revenue discovered the February 1983 ten acre conveyance in the deed book. Based on this information, he voided the application for special use assessment on the taxpayer's parcel. Accordingly, the taxpayer was assessed on January 1,1984, for real property taxes on the portion of the parcel that he still owned on the basis of fair market value as applied to other real estate in the jurisdiction. Section 58.1-3234 contains the pertinent statutory language as follows:

> *"An application shall be submitted whenever the use or acreage of such land previously approved changes . . .*
>
> In the event of a material misstatement of facts in the application or a *material change in such facts* prior to the date of assessment, such application for taxation based on use assessment granted thereunder shall be void and the tax for such year extended on the basis of the value determined under § 58.1-3236D (fair market value as applied to other real estate in the jurisdiction.)" (Emphasis added.)

Note that the statute contemplates voiding an application, either because of a material misstatement or because of a material change in facts. According to the facts presented in the November 1983 application, no change in acreage had occurred. In fact, however, ten acres had been sold. An application reflecting the change was not submitted before the January 1, 1984 assessment date. Section 58.1-3234 clearly allows the locality to void the application and to value the property at fair market value as other real estate in the jurisdiction.[2]

Based on the foregoing, it is my opinion that a locality can void a use value assessment application when a material change in acreage occurs before the January 1 assessment date if the taxpayer does not submit a new application reflecting the change. The entire parcel loses the special use valuation and must be assessed at fair market value for that tax year.

---

[1] *The Taxpayer indicated that he so answered the question because he had assumed that the deed had been recorded in late 1982. In any event, however, the commissioner of the revenue apparently has no record that the taxpayer ever initiated a change of information concerning the change in facts.*

[2] *The application can be void under the authority of § 58.1-3234 because there was a material* ***change*** *in the facts. The provisions in § 58.1-3238, relating to material misstatements and intentional misrepresentation, need not be considered in the circumstances you have presented.*

May 17, 1984

THE HONORABLE LOIS B. CHENAULT
Commissioner of the Revenue for Hanover County

You have asked whether the landowner or successor to the owner of a parcel of real estate, which has previously been removed from a land use program under § 58-769.8:1 conveyed ten acres of the parcel to a new owner. In November 1983, as is required annually in the locality, the taxpayer reapplied for (58.1-3235) by reason of delinquent taxes, may reapply for inclusion of the parcel in the program. Your inquiry is based on the assumption that the parcel otherwise qualifies for the land use program.

Your question pertains to the Land Use Taxation Act (the "Act"), § 58-769.4 *et seq*. (58.1-3229) of the Code of Virginia, which authorizes localities to provide an ordinance for the use value assessment and taxation of real estate as classified in § 58-769.5 (58.1-3230) Section 58-769.8:1 (58.1-3235) requires removal of real estate from the land use program if, after mail notice to the property owner on June One of taxes delinquent for any prior year on property which has a special land use assessment under the Act, the delinquent taxes remain unpaid on November One. The last paragraph of § 58-769.8 (58.1-3234) also bases the continuation of valuation and assessment under a local land use program ordinance on the "continued payment of taxes as referred to in § 58-769.8:1..."

I find nothing in §§ 58-769.8 (58.1 -3234) or 58-769.8: 1 (58.1 3235) or any other section of the Act to prohibit a landowner from reapplying and being reinstated to the land use program after removal pursuant to § 58-769.8:1 (58.1-3235).[1] Accordingly, if all the prior delinquent taxes and applicable penalties and interest are paid,[2] it is my opinion that the landowner could submit a new application for taxation under the locality's land use program to the local assessing officer within the time limits established in § 58-769.8. (58.1-3234). *See* 1979-1980 Report of the Attorney General at 339 (holding that real estate removed from taxation on the basis of use under a different set of facts is not forever disqualified from special land use tax treatment.) [3]

---

[1] ***Cf.*** *Opinion to the Honorable David L. Berry, Commissioner of the Revenue for Rockingham County, dated November 7, 1983 (parcel for which zoning changed to a more intensive use is permanently ineligible):* ***but cf.*** *Ch. 222, Acts of Assembly of 1984 (reverses* ***Berry Opinion*** *restoring eligibility three years after parcel is rezoned to an eligible land use).*

[2] *The requirement that all delinquent taxes as well as applicable interest and penalties be paid prior to acceptance or approval of the application is evident from the last two sentences of the third paragraph of § 58-769.8. These sentences provide: "Except as provided by local ordinance, no application for assessment based on use shall be accepted or approved if at the time the application is filed, the tax on the land affected is delinquent. Upon the payment of all delinquent taxes, including penalties and interest, the application shall be treated in accordance with the provisions of this section." This language was added to the Code in 1979.* ***See*** *Ch. 632, Acts of Assembly of 1979. The "except" clause permits a locality by ordinance to provide for acceptance and approval of the land use program application even where taxes are delinquent. Such a local provision would clearly be repugnant to the removal provisions for delinquent taxes enacted in 1980.* ***See*** *Ch. 508, Acts of Assembly of 1980. The later amendment, therefore, operates as a repeal of the "except" clause.* ***See Miller v. State Entom't,*** *146 Va. 175, 135 S.E. 813 (1926),* ***affd*** *276 U.S. 272 (1928).*

[3] *This opinion dealt with the conveyance of five acres from a larger parcel of forest land. The five-acre tract alone did not meet the minimum acreage requirement for eligibility for assessment based on use. The opinion held that the tract could, in the future, qualify for forest use valuation if it is combined with a contiguous parcel owned by the same person because the total acreage would meet the minimum size requirements.*

November 7, 1983

THE HONORABLE DAVID L BERRY
Commissioner of the Revenue for Rockingham County

You have asked whether real property may qualify for land use valuation under the following circumstances: (I) the owner obtains a rezoning to a more intensive use at his own request; (2) he then subdivides the land into tracts of five acres or more and sells them. You wish to know whether the new owners may obtain land use valuation for these rezoned tracts.

Section 58-769.10(D) (58.1 -3237 D) of the Code of Virginia states in part:

> "If at any time after July one, nineteen hundred eighty the zoning of property taxed under the provisions of this article is changed to a more intensive use at the request of the owner or his agent, such property shall not be eligible for assessment and taxation under this article for the years such change is effective or any subsequent tax year, but it shall not be subject to roll-back taxes until a change in use occurs."

The language of this section is clear: the land is ineligible for land use taxation for the year that the rezoning change is effective or for any subsequent tax year, regardless of the fact that there may not be a change in use of the land or that the property or a portion thereof is sold to a new owner.[1]

The provisions of § 58-769.13 (58.1-3241) do not change this result. Section 58-769.13(a) (58.1-3241A) states in part that separation or split-off of lots from real estate valued under land use shall subject it to the roll-back tax but "shall not impair the right of each subdivided parcel of such real estate to qualify for such valuation, assessment and taxation in any and all future years, provided it meets the minimum acreage requirements and *such other conditions of this article* as may be applicable . . " (Emphasis added.) Land which has been rezoned at the request of its owner to a more intensive classification and then subdivided would not meet the "other conditions of this article."

This result is in accordance with the purpose of the land use valuation statutes. The purpose is stated in § 58-769.4 (58.1-3229), to be to tax land in a manner that will promote its preservation. This section and § 58-769.10(D) (58.1-3237 D) provide in effect, that in determining whether a property qualifies for land use, an intensive zoning classification in effect prior to July 1,1980 will l not be considered. Action by an owner, however, to rezone his land to a more intensive use so as to make it eligible for development will render it ineligible for land use valuation. This section could easily be circumvented if its effect could be avoided by merely selling off the land immediately after obtaining the rezoning.

Furthermore, if the new owner wishes to use the land for purposes which would make it eligible tor use valuation he may obtain a rezoning to a less intensive category. The intensive zoning classification would no longer apply and the land would then be eligible for land use valuation in the future if all other requirements are met.

---

[1] *A prior Opinion of this Office held that a county-wide rezoning, not requested by the owner, which resulted in a change in zoning to a more intensive use did not disqualify the parcel from land use valuation, assessment and taxation until the use of the parcel changed.*

See *1975-1976 Report of the Attorney General at 357. That result was not overruled by the addition of § 58-769.10(D) (§58-769.10), Ch. 363. Acts of Assembly of 1980, because in order to trigger that provision the action to change the zoning to a more intensive use must originate with the owner or his agent.*

June 10,1983

THE HONORABLE P. WARREN ANDERSON, JR.
Commissioner of the Revenue for Amelia County

You advise that Amelia County withdrew forestry from the land use tax program in 1980, effective in the 1981 tax year. Thereafter, forestal land no Ionger qualified for special tax assessment based on land use under § 58-769.4 (58.1-3229) *et seq*. of the Code of Virginia.

You have asked which years are to be considered in applying roll-back taxes pursuant to § 58-769.10 (58.1 -3237) if a parcel's use is subsequently changed from forestal use to nonqualifying use, now that the county has deleted the particular category from use value assessment under which the parcel had been qualified. I assume that the parcel was not assessed at use value in 1981 because forestal use was no longer an eligible category and that the new use was not an eligible use under the ordinance. (Other eligible uses would include agricultural, horticultural and open-space. *See* § 58--769.5, 58.1-3230)

Section 58-769.10(A) (58.1-3237A) provides that:

> "When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes, to a nonqualifying use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes, in an amount equal to the amount, if any, by which the taxes paid or payable on the basis of the valuation, assessment and taxation under such ordinance were exceeded by the taxes that would have been paid or payable on the basis of the valuation, assessment or taxation of other real estate in the taxing locality *in the year of the change and in each of the five years immediately preceding the year of the change*, plus simple interest on such roll-back taxes at the same interest rate applicable to delinquent taxes in such locality, pursuant to § 58-847 (58.2-3916**)** or § 58-964 (58.2-3918). *If in the tax year in which the change of use occurs the real estate was not valued*, assessed and taxed *under such ordinance*, the real estate shall be subject to roll-back taxes for *such of the five years immediately preceding in which the real estate was valued*, assessed and taxed under such ordinance." (Emphasis added)

Turning to your specific question of which years are to be included in the roll-back when the land use changes, the answer depends upon which year the use changes. If the use had changed in 1980 or any preceding year, the first sentence in § 58-769.10(A) (58.1-3237A) would apply; thus, the rollback would apply for 1980 (the year of the change) and the five years preceding 1980 in which the land was assessed at the land use rate. On the other hand, based on the assumption that the change in use occurred after 1980, the last sentence above quoted would be applicable. Therefore, when the land use changes, roll-back taxes may be imposed for the years, not exceeding five of the immediately preceding years, in which the county provided for use value assessment of forestal land and in which the land was assessed based on its forestal use. The year 1980 was the last year in which the ordinance applied to forestal use, and thus would be the latest year to be counted when applying the roll-back.[1]

---

[1] *For example, if the use first changes in 1983 to a nonqualifying use, the roll-back tax would be imposed for the years 1978, 1979 and 1980 (the three years of the preceding five years in which the land was taxed at the use rate.*

May 26, 1983

THE HONORABLE DABNEY H. BOWLES
Commissioner of the Revenue for Louisa County

You have asked whether you are required to assess a landowner with roll-back taxes when lands assessed under the land use program have been removed from the use value assessment program for failure to pay taxes. In my opinion, the roll-back tax should not be assessed in such a case.

Section 58.769.8:1 (58.1-3235) of the Code of Virginia provides:

> "If on June one of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this article are delinquent, the appropriate county, city or town treasurer shall forthwith send notice of that fact and the general provisions of this section to the property owner by first-class mail. If after sending such notice, such delinquent taxes remain unpaid on November One, the treasurer shall notify the appropriate commissioner of the revenue who shall remove such parcel from the land use program"
>
> Roll-back taxes are imposed by § 58-769.10(a), (58.1-3237 (A), which states in part:
>
> "When real estate qualifies for assessment and taxation on the basis of use under an ordinance adopted pursuant to this article, and the use by which it qualified changes, to a nonqualilying use, it shall be subject to additional taxes, hereinafter referred to as roll-back taxes . . ." (Emphasis added.)

Sections 58-769.10(C) (58.2-3237 C) and 58-769.13 (a) (58.2-3241 A) further define "a nonqualifying use" to make it clear that roll-back taxes are imposed only when the actual use of the land changes to a nonqualifying use or the acreage changes to an amount less than the minimum requirement. The mere fact that the parcel has been removed from the use value assessment program does not, of itself, subject such land to roll-back taxes.[1]

In prior Opinions, this Office has pointed out situations where removal of a parcel from land use assessment does not subject it to roll-back taxes. For example, a change in use of a portion of a parcel subjects only that portion to the roll-back tax, and not the portion remaining in a qualifying use. However, while failure to report the change in use to the commissioner of the revenue may result in disqualification of the entire parcel from continuation in the use assessment program, it does not subject the unaltered acreage to roll-back taxes. l980-1981 Report of the Attorney General at 355.

In another Opinion it was noted that while a change in the statutory criteria for use valuation might remove a parcel from the program, the roll-back taxes would not be imposed in the absence of an actual change in the parcel's use. 1972-1973 Report of the Attorney General at 426. Therefore, unless the parcels have changed to a nonqualifying use or size, removal from land use valuation because of delinquency of taxes would not subject them to the roll-back tax.

May 23,1983

THE HONORABLE ALICE JANE CHILDS
Commissioner of the Revenue for the County of Fauquier

You have asked whether a sludge lagoon on land leased by a farmer qualifies for the special assessment available under Title 58, Ch.15, Art. l . l (Title 58.1, Ch.32, Art.4) of the *Code of Virginia*.

You advise that the lagoon was built by a private processor on the farmer's land. You have stated further that the owner/farmer and other farmers will use the sludge as fertilizer on their farms. l assume that Fauquier County has adopted an ordinance pursuant to § 58-769.6 (58.1-3231) providing for special use assessment. From your statement of the facts, l also assume that you are asking particularly whether the land in question qualifies for the special classification labeled "(r)eal estate devoted to agricultural use" defined in § 58-769.5(a) (58.2-3230A).

The applicable portion of § 58-769.5(a) (58.1-3230A) establishes a special classification for real estate "when devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Commerce . . "

According to *Webster's Seventh New Collegiate Dictionary* (1972), sludge is “precipitated solid matter produced by water and sewage treatment processes." The land in question is used for storage of sludge, rather than for the “bona fide production for sale of plants . . ." The fact that fertilizer used in farming is a by-product of the treatment processes does not alter the fact that the direct use of the land is not for agricultural purposes.

Based on the foregoing, it is my opinion that a sludge lagoon built by a private firm on land leased to it by a farmer does not qualify for the special assessment available for land devoted to agricultural use under § 58-769.5(a) (58.1-3230).

March 10,1983

THE HONORABLE VICTOR J. SMITH
Commissioner of the Revenue for the City of Harrisonburg

You have asked several questions concerning the administration by the City of Harrisonburg of a land use assessment ordinance on land annexed from an adjoining county which had a land use ordinance in effect prior to annexation. The annexation decree required the city to adopt such an ordinance but does not address its administration. Preferably, the problem presented by administering this program in the city should be referred to the annexation court, which is subject to being reconvened in the manner provided by law at anytime during a period of ten years from the effective date of the order of annexation. However, in an effort to assist your office, l will express my opinion on the questions you have presented.

First, you ask whether taxpayers who were under land use taxation in the county must be accepted as such by the city without making application or whether the city may require such taxpayers to make application and pay the application fee.

Section 58-769.8 (58.1-3234) of the Code of Virginia requires property owners to submit an initial application to "the local assessing officer. . . " Section 58-769.6:1 (58.13232)[1] states that "*la]ll* of the provisions of this (the land-use taxation

article shall be applicable to . . ." a city land use ordinance except that if annexed land was a part of a county which had in operation a land use ordinance, the city may adopt its land use ordinance for the tax year prior to April first, and "applications from landowners may be received at any time within thirty days of the adoption of the ordinance. . ." (Emphasis added.) Read together, these sections contemplate that applications will be made to the city's assessing officer, under the city's new ordinance, regardless of the status of the land when it was in another taxing jurisdiction.

It is my opinion that an application under a new ordinance submitted to a new taxing authority is a "new" application. The city assessing authority is under no duty, absent agreement or order, to accept without application or fee the classifications created by the county for parcels enrolled in its land use taxation program. In fact, the valuation of land may be different under each jurisdiction (although the eligibility should not) because each assessing officer is required to use his "personal knowledge, judgement and experience" as to the value of the real estate, as well as the recommendation of the State Land Evaluation Advisory Committee. *See* § 58.769.9(a) (58.1-3236A). Further, the taxpayer may be required to pay an application fee with his application. *See* § 58-769.8 (58.1-3234). Thus, in answer to your first question, I conclude that the city may require landowners to submit applications and pay the prescribed fee. This appears to be a harsh result, but no other provision has been made to administer the program.

In your next question, you have inquired whether an application fee may be required for each parcel on the land book, even if such parcels are in common ownership and are contiguous. This Office has opined that if the parcels are separately assessed on the land book, a separate application is required for each parcel. *See* 1979-1980 Report of the Attorney General at 339; 1974-1975 Report of the Attorney General at 456. Because § 58-769.8 (58.1-3234) permits a fee to be charged for "all such applications," it is my opinion that a separate fee may be charged for each parcel of land for which a separate application is required to be made, regardless of contiguity. However, the locality is not required by § 58-769.8 (58.1-3234) to charge such fees and it is my opinion that the land use taxation ordinance may provide for one fee for more than one application covering contiguous parcels.

You next inquire whether, if a taxpayer has the right to request that his contiguous parcels be combined into one parcel, the request must be formal and include a plat or if it may be an oral request. This Office has previously stated that an owner of contiguous tracts may petition the commissioner of the revenue to consolidate such tracts into one line in the land book. *See* 1979-1980 Report of the Attorney General, *supra*; 1958-1959 Report of the Attorney General at 277. There is no statutory procedure established for this process. However, I note that § 58-804(e) (58.1-3285) requires that "(w)henever a tract of land has been subdivided into lots under any provision of general law and plats thereof have been recorded, each lot in such subdivision shall be assessed and shown separately upon the books." Consequently, if a plat for the separate parcels is on record, then it appears that a plat showing the parcels combined as one must subsequently be recorded in order for the commissioner of the revenue to assess and show such parcels as one. In that case a plat must be submitted; however, where no such subdivision plat was formally recorded, there appears to be no reason to require such formality when parcels are to be combined.

You next ask whether such a request to combine contiguous parcels is effective for the current tax year or whether it is to be treated as a land transfer and given effect in the year following the year of the request.

For the purposes of land use taxation, the landowner is required to make application prior to November first in order to be so assessed during the subsequent tax year.[2] Real property is generally assessed against its owner on January first. *See* § 58-769 (58.1-3232) 1974-1975 Report of the Attorney General at 527. The petition for consolidation must be made and approved prior to the application; then when the application is made, it will take effect the following tax year (or in the case of annexed property, pursuant to § 58-769.6:1 (58.1-3232), for that tax year.[3] A consolidation request made subsequent to the date that the application for land use assessment must be made cannot, of course, affect the application process. Because no change in ownership is involved, the act of consolidation has no effect on the assessment date of January first. Therefore, in my opinion, a timely request for consolidation of separate parcels takes effect as soon as it is approved by the commissioner of the revenue and is shown in the land books. If that occurs prior to the date an application for land use assessment must be and is made, then one application may be made for the combined parcel, for the relevant tax year.

You next ask three questions concerning the administration of roll-back taxes on land in the annexed area.

In your first question, you set out the following factual situation: assume a parcel of land was under the county's land use ordinance for four years, then under the city's for one year, and a change in use subjects it to the roll-back tax while under city jurisdiction. Based on these facts, you ask whether the city is entitled to assess and collect the roll-back taxes for the entire five years. In my opinion, the answer to that question is no.

Because the roll-back is a tax under § 58-769.10 (58.1-3237), it subjects the real estate to a lien, pursuant to § 58-762 (58.1-3340). The roll-back tax is considered to be a deferred tax according to § 58-769.15(h) (58.1-3243) and would constitute an inchoate lien in the years prior to a change in use. *See* 1976-1977 Report of the Attorney General at 299. That lien runs in favor of the authority to which taxes are owed. For the years it was under county jurisdiction, that was the county. Furthermore, § 15.1-1041 provides that "(a)ll taxes assessed in the territory annexed for the year at the end of which annexation becomes effective and for all prior years shall be paid to the county." Consequently, in my opinion, the city is not entitled to roll-back tax for years when the land was under county jurisdiction, then clearly, the county valuations and rates must apply for those years.

Finally, you ask if the city must compute the roll-back for the time the parcel was in the city and notify the county of the change in use and have the county compute and bill the landowner with its share of roll-back taxes or, alternatively, must the city do all the roll-back computations and billing and share the proceeds with the county on a pro rata basis.

There is no clear statutory guidance here. This question emphasizes the desirability of reconvening the annexation court for clarification. Of course, in absence of court direction, there is no reason why an agreement may not be made between the city and county with respect to any step in the collection of roll-back taxes, and particularly, with respect to notification to the county of a change in use. In the absence of an agreement or provision in the annexation decree, however, there is no statutory duty on the city to collect such taxes for

the county.

[1] *The September 9, 1982, order of the Supreme Court affirming the order of the three-judge annexation court was not entered soon enough for the city, under § 58-769.6 (§ 58.1-3231), to ordain land use taxation prior to June 30, 1982, so that the entire city would come under the ordinance for tax year 1983. Section 58-769.6:1 (§ 58.1-3232), therefore, places two restrictions on the city land use ordinance adopted November 23, 1982: (1) the city's land use ordinance applies to only the real estate in the area newly annexed, and (2) the ordinance is effective only for the 1983 tax year. A new ordinance must be adopted prior to June 30, 1983, to be effective for tax years 1984 and thereafter.*

[2] *In the case of annexed property, there is a grace period by § 58.769.6:1 (§ 58.1-3232).*

[3] *The land use assessment application process will have taken place prior to the time the commissioner of the revenue has prepared and delivered the land book to the treasurer after which time "no alteration shall be made therein by him affecting the taxes or levies for that year." See (§ 58.1-3311.)*

February 10, 1983

THE HONORABLE JOHN WATKINS
Member, House of Delegates

You have asked two questions concerning use value assessment of real property. First, you ask whether a locality may remove a parcel of real estate from a use value assessment program merely because the ownership changed from individual ownership to a partnership consisting of the same owners. Second, you inquire whether a locality may require a survey of the real estate to accompany an application for use value assessment as a prerequisite for eligibility.

The answer to your first question is provided by § 58-769.8 (58.1-3234) of the Code of Virginia, which states, in part, as follows:

> AContinuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continuance of the real estate in the use for which classification is granted, continued payment of taxes as referred to in § 58-769.8:1 (58.1-3235), and compliance with the other requirements of this article and the ordinance *and not upon continuance in the same owner of title to the land*." (Emphasis added.)

In my opinion, a parcel may continue in a use value assessment program despite a complete change in ownership, so long as the actual use of the land does not change and the other prerequisites of § 58-769.8 (58.1 -3234) are satisfied.[1]

In answer to your second question, I find no basis for permitting a locality to automatically require every application for use value assessment to be accompanied by a survey. Section 58-769.8 (58.1-3234) requires property owners wishing to qualify for use value assessment to submit an application on forms prepared by the State Tax Commissioner. In addition, an application fee may be required by the locality. No other specific application requirements are set out. In determining whether a parcel qualifies for use values assessment, the local assessing officer must make certain requirements.[2] If a question should arise whether the parcel meets these minimum acreage requirements, it may be necessary for the applicant to produce evidence which will qualify the parcel for the minimum acreage. Although such evidence may include a survey, the locality should consider all facts that are relevant on the question whether the property meets the use requirements.

[1] *The corollary to this section is § 58-769.10(58.1-3237), which provides for imposition of a roll-back tax if the use does change to a nonqualifying use. That section provides, in subsection (C), that "(l)iability to the roll-back taxes shall attach when a change in use occurs but not when a change in ownership of the title takes place if the new owner continues the real estate in the use for which it is classified. . . ." See 1980-1981 Report of the Attorney General at 355.*

2 Section 58-769.7(b) (58.1-3233 2) sets the following minimum: (1) agricultural or horticultural use – 5 acres; (2) forest use - 20 acres; (3) open-space use - 5 acres (2 acres in certain cities, counties and towns).

September 4,1980

THE HONORABLE FREDERIC T. GRAY
Member, Senate of Virginia

You have asked three questions pertaining to "roll-back" taxes under § 58-769.10 (58.1-3237) of the Code of Virginia (1950), as amended, in the following situations.

Facts

You have posited three hypothetical fact situations and asked how § 58-769.10 (58.1-3237) would apply.

1. A landowner owns 120 acres and is participating in the county's land use tax program. *See* §§ 58-769.4 (58.1-3229) to 58-769.15:1 (58.1 -3244). While retaining title to the land, the landowner permits one of his children to build a home on a portion of the land.

2. After the home is completed, the landowner, by deed or gift, conveys the land upon which the house was built and five surrounding acres to his son. An additional three acres is also conveyed to the landowner's daughter at this time.

3. The landowner did not notify the taxing authorities of these gifts in writing.

Questions

Under each fact situation, should a roll-back tax apply, and if so, should the roll-back be applied to the entire tract or only to the land conveyed or changed in use?

Analysis

No dates are given as to when building on the parcel commenced or when the deeds of gift were executed. Section 58-769.10(A) (58.1-3237), has been amended several times since its original enactment; however, none of these amendments are germane to your inquiries.

1. Under § 58-769.10(A) (58.1-3237), when land qualifying for use assessment and taxation is converted to a non-qualifying use, a roll-back tax liability attaches. Building a residence is such a change in use. Section 58-769.10(B) (58.1-3237) provides the formula by which the roll-back tax liability is computed. Subparagraph B does not require that the roll-back tax be applied to the entire parcel but rather limits the roll-back to "real estate which has changed in use." The use of the 120 acre parcel which initially qualified has not changed; rather, a change in use has occurred only upon that portion of the parcel upon which the son has built a house. Only that small parcel has changed in use and is liable for the roll-back tax.

To hold that the entire 120 acre parcel is subject to roll-back tax liability first would require the conclusion that the use of the entire parcel has changed. Such a conclusion, under the facts considered, simply defies common sense. Moreover, that result would not carry out the intent[1] of the General Assembly *i.e.*, to encourage the preservation of certain uses of real estate and to ameliorate the financial pressures

towards converting such real estate to more intensive uses. *See §* 58-769.4 (58.1-3229) and Art. X, § 4 of the *Constitution of Virginia* (1971).

However, the remaining, and larger portion of the 120 acres may be disqualified from further continuance in the use assessment program if an application informing the assessing officer of the change in use were not timely filed. *See* §§ 58-769.8 (58.1-3234) and 58-769.10(C) (58.1-3237). No five year roll-back liability is involved with respect to such acreage.

2. The first inquiry does not state how many acres of the total 120 acres were changed in use. Such a determination is a factual one and the later deeds of gift, while perhaps probative, are not dispositive of the question. If the acreage conveyed by the deeds of the gift is the same acreage which was changed in use, there is no additional roll-back liability because such roll-back was previously triggered by the change in use, and the conveyances are not changes in use.

Of course, failure to report the change in acreage can disqualify the parcels from continued participation in the use assessment program. *See* § 58-769.8 (58.1-3234).

If the deeds of gift involve less real estate than that previously subjected to roll-back tax liability, no further roll-back taxes are incurred. If the deeds of gift convey additional real estate beyond that previously subjected to roll-back taxes, then additional roll-back liability may attach *if* an accompanying change of use also occurs. In any event, the real estate deeded to the daughter and son will no longer qualify for future participation in the use assessment program because the minimum acreage requirement cannot be satisfied.

3. As previously noted, change in use is the event which triggers roll-back tax liability. Whether or not notification to the assessing officer is given, the liability attaches. The notice is simply a mechanism by which assessment of the roll-back taxes can be facilitated. The political subdivision should receive payment in a more expeditious manner, while a landowner avoids undue penalty and interest accruals. In addition, the landowner should be thereby prompted to re-apply for participation in the use assessment program, assuming his remaining real estate continues to qualify. The application must be timely filed or the landowner cannot participate in the program. *See* Report of the Attorney General (1975-1976) at 359.

[1]*Requiring a roll-back tax on the entire parcel would also be inconsistent with the policy of § 58-769.13(a), which permits the Aremaining real estate≅ to continue in the use assessment program. (§ 58.1-3241)*

May 1,1980

THE HONORABLE C. PHILLIPS FERGUSON
Commonwealth's Attorney for the City of Suffolk

You have asked if a church may be liable for the "roll-back" tax authorized by § 58-769.10 (58.1-3237) of the Code of Virginia (1950), as amended, in the following circumstances.

Facts

A church purchased a parcel of land which, at the time of acquisition, was qualified for and received the benefits of land use assessment and taxation. Thereafter, the church changed the use of the property to a "non-qualifying use" for purposes of land use taxation. It is assumed that the parcel is otherwise exempt from taxation from the date purchased by the church.

Question

Can the church be held liable for roll-back taxes which relate to the period before the church purchased the property?

Analysis

The Virginia Constitution (1971) guarantees that the real property owned by a church is exempt from taxation when used for certain specified purposes. See Art. X, § 6(a)(2).

A distinction must be made, however, between the taxation of property owned by a church and the accountability of a church to satisfy a liability arising from an encumbrance (choate or inchoate) which runs with the land and existed prior to the purchase of the land by the church.

Section 58-769.10 (58.1-3237) provides, and this Office has so ruled, that the roll-back tax is the nature of an inchoate lien which runs with the land and is created at the time the parcel is accorded favorable tax treatment under the land use assessment and taxation program. *See* Reports of the Attorney General (1978-1979) at 271; (1976-1977) at 299; (1972-1973) at 423. The inchoate lien attaches on a year-to-year basis as long as the property is enrolled in the land use program and the owner is otherwise subject to property tax. *See* § 58-769.10. The fact that the church performs the act ("change in use") which triggers the inchoate lien does not change the fact that the church acquired the property subject to such lien.[1] *Id.*

Based upon the foregoing, it is my opinion that the church is liable for the roll-back tax for each of the five years immediately preceding the year of "change of use" during which the land was taxed under a land use ordinance and was owned by a non-tax exempt entity.

---

[1] *Sections 58-769.15 (58.1-3243) supports this position in that it clearly provides that "roll-back taxes shall be considered to be deferred real estate taxes" subject to the general law relating to tax liens.*

October 29,1979

THE HONORABLE STANLEY R. LEWIS
Commissioner of the Revenue for Middlesex County

You ask whether tax relief for the elderly (§ 58-760.1 (58.1-3210 - 58.1-3219) of the Code of Virginia (1950), as amended) may be extended to a parcel which already enjoys a partial tax exemption under the land use taxation program (§§ 58-769.4 *et. seq*.) (58.1-3229).

Facts

Copies of your local ordinances which authorize these two forms of tax relief show: (1) that the land use taxation ordinance provides a tax exemption based upon the difference in the assessed value of the parcel due to the difference between "fair market" and "land use" values and, (2) that the tax relief for the elderly is expressed as an exemption from a certain percentage of the tax otherwise imposed upon the parcel, which percentage is in indirect proportion to the combined income of the owner(s) of such parcel. Also, tax relief for the elderly cannot exceed $ 150 of tax liability.

The taxpayer in this case maintains his dwelling place upon the parcel in question.

Analysis

First, we are bound by the general rule of statutory construction which requires that each statute or statutory scheme be given its full effect unless doing so would clearly conflict with the purpose of another law. *Board of Supervisors v. Marshall,* 215 Va. 756 214 S.E.2d 146 (1975).

Second, nothing in the two tax relief schemes, either as authorized by general laws or as implemented by your local ordinances, indicates that tax relief under one scheme is meant to preclude tax relief under the other.

Third, this Office has previously held that tax relief for the elderly can extend to the entire parcel upon which the taxpayer's dwelling house is situated. *See* Report of the Attorney General (1975- 1976) at 346.

Fourth, administrative implementation of both measures is easily accomplished in this instance, to wit: (1) tax liability for the entire parcel is determined using the land use value for the parcel as the amount against which the tax rate is applied; (2) a further exemption from the tax liability computed under (1) is then determined in accordance with the "total combined income" formula set-out in your local ordinance; in accordance with your ordinance, that such additional exemption may not exceed $150 of the tax liability determined in (1) above.

Based upon the foregoing, it is my opinion that both tax relief measures may be applied to this particular parcel of land under the terms of your local ordinances.

September 21,1979

THE HONORABLE DABNEY H. BOWLES
Commissioner of the Revenue for Louisa County

You ask several questions concerning the Land Use Taxation Act, §§ 58-769.4 *et seq*. (58.1-3229), of the Code of Virginia (1950), as amended.

Facts

A 75 acre tract of forest land qualified for assessment and taxation on the basis of use for the years 1977 and 1978. On June 30, 1978, "A" conveys 5 acres of the tract to "B" On August 14,1978, "B" reconveys the same land to "A."

Questions

1. Whether a roll-back tax is incurred when the five acre tract is split-off by conveyance from the 75 acre tract?

2. Whether the five acre tract could be eligible for use-value assessment if it is reconveyed to the original owner?

3. Whether a new application is required for the remaining 70 acres to be eligible for use-value assessment?

4. Whether one new application is sufficient to qualify the 70 and 5 acre tracts?

Roll-Back

Section 58-769.13(a) provides:

> "Separation or split-off of lots, pieces or parcels of land from the real estate which is being valued, assessed and taxed on the basis of use . . . either by conveyance or other action of the owner of such real estate shall subject the real estate so separated to liability for the roll-back taxes applicable thereto . . . No subdivision of property which results in parcels which meet the minimum acreage requirements of this article . . . shall be subject to the provisions of this subsection."

The conveyance from "A" to "B" is clearly a "split-off" of a parcel within the meaning of the statute. Even if the conveyance were a "subdivision of property" within the meaning of the second paragraph of subsection (a) of the statute, the 5 acre parcel fails to meet the minimum acreage requirements for forest land. *See* § 58-769.7(b) (58.1-3233). Consequently, there is no doubt that the conveyance "subject[s] the real estate so separated to liability for the roll-back taxes applicable thereto."

The question remains, however, whether the word "subjects" means that the mere act of split-off triggers the roll-back, or whether an actual "change in use" within the meaning of § 58-769.10 (58.1-3237), must occur before the roll-back is imposed.[1] A review of the legislative history of § 58-769.13(a) (58.1-3241) supports the former construction. *See* Ch. 385 [1978] Acts of Assembly. Prior to 1978, § 58-769.13(a) stated that a split-off would subject the real estate to liability for the roll-back only if the land so separated was put to "a use other than agricultural, horticultural, forest or open-space. . . " In 1978, the "change in use" proviso was eliminated from the statute. Additionally, the second paragraph of subsection(a) of the statute, also a 1978 amendment, contemplates that the split-off parcel can only escape the liability for roll-back if it meets the minimum acreage requirement of § 58-769.7(b) (58.1-3233). In this instance, however, the parcel was not split off until June 30,1978, the day before the effective date of the amendment to § 58-769.13(a) (58.1-3241). Consequently, the roll-back would not apply to this conveyance under any circumstances.

If, on the other hand, the conveyance had taken place on or after July 1, 1978, it is my opinion that the roll-back tax liability, as computed under § 58-769.10 (58.1-3237), would apply to the split-off parcel.

Eligibility of the Reconveyed Acreage

Even though the 5 acre tract, standing alone, does not meet the minimum acreage requirement for forest land (§ 58-769.7(b) (58.1-3233), the parcel can qualify in the future, if, after being combined with another contiguous tract(s) owned by the same person, the total acreage of the parcels meets the minimum size requirement. *See* Report of the Attorney General (1975-1976) *supra*. Consequently, if all other statutory and regulatory conditions of the Act are met, the 5 acre tract could qualify for forest use valuation because, upon reconveyance, it is contiguous with a forestal parcel larger than 15 acres which is owned by the same taxpayer.

Application Requirement

Section 58-769.8 (58.1-3234) provides that "[a]n application shall be submitted whenever the use or acreage of such land previously approved changes. . . " Irrespective of the reconveyance, the acreage of the previously approved tract changed in 1978. Consequently, a new application must be timely filed by the taxpayer to secure continued eligibility in the land-use program. The question remains whether a separate application is necessary for the 5 acre tract upon reconveyance. The general rule is that a separate application is required for each tract which is separately stated on the Land Book. *See* Report of the Attorney General (1974-1975) at 456. In this instance, the 1979 Land Book should show the original 75 acre tract as two parcels, one 70 acres and the other 5 acres. *See* § 58-803 (58.1-3309). This office has previously opined that the owner of contiguous tracts may petition the Commissioner of the Revenue to consolidate such

tracts onto one line in the Land Book. *See* Report of the Attorney General (1958-1959) at 277. However, consolidation on one line of the Land Book should not be permitted until five years has elapsed since the split-off parcel has again qualified for favorable land use tax treatment. [2]

Based on the foregoing, it is my opinion that a new application must be filed for both tracts in order for each to be eligible for continued assessment based on use.

[1]*This Office has previously ruled that "a change in acreage or a severance of a qualified parcel so that a portion thereof no longer meets minimum acreage requirements will not subject the land to roll-back taxes so long as a qualifying use continues." **See** Opinion to the Honorable Alice Jane Childs, Commissioner of the Revenue, Fauquier County, dated February 18, 1976, found in the Report of the Attorney General (1975-1976) at 341-342.*

[2] *Under § 58-769.10 (§ 58.1-3237), liability for roll-back taxes extends back for five years. Consolidation on one line on the Land Book would aggregate two parcels with different land use tax histories. If a later event triggered a roll-back of taxes. It would be very difficult to determine the amount of the liability. This result can be avoided by stating the parcels separately on the Land Book until each has at least a five year history of favorable land use tax treatment. Of course, this separate statement on the Land Book has no effect on the eligibility of the parcel to qualify or continue in the land use program.*

May 16,1979

THE HONORABLE JULIA M. TAYLOR
County Attorney for Loudoun County

You ask whether a local assessing officer may use a three acre "rule of thumb" to determine the extent of land excluded from special use assessment as "additional real estate as may be actually used in connection with, the farmhouse or home or any other structure not related to such special use . . ." as provided under § 58-769.9(b) (58.1-3236) of the Code of Virginia (1950), as amended (a portion of the Land Use Taxation Act (§§ 58-769.4, *et seq*.) (58.1-3229). It appears that this "rule of thumb" is used for purposes of administrative convenience.

Analysis

Article X, Section 2, of the Virginia Constitution (1971), provides that if the General Assembly grants land use tax relief or deferral "it shall prescribe the limits, conditions, and extent of such deferral or relief." Under the Act, the General Assembly dealt specifically with the question you ask. Section 58-769.9(b) (58.1-3236), provides, in part:

> "(b) . . . real estate under, and such additional real estate as may be actually used in connection with, the farmhouse or home or any other structure not related to such special use shall be excluded in determining such total area (eligible for land use taxation)" (Emphasis added.)

The key issue, then, is the proper meaning of the word "actually."

It is a universally recognized rule of statutory construction that plain unambiguous words ought to be accorded their ordinary meaning. 17 KJ. *Statutes* § 37(1951.) *Webster's New Collegiate Dictionary* (1977 ed.) defines "actually" to mean:

> "1: in act or in fact: REALLY . . .
> 2: at the present moment . . .
> 3. in point of fact: in truth . . ."

Another generally recognized rule of construction is that the meaning of a word should be determined with reference to the context in which it appears. l7 MJ. *Statutes §§* 41 and 42 (1951). Applying these two rules of construction, it appears that the assessing officer may not apply a three acre "rule of thumb," although to do so may be administratively expedient.

First, the plain meaning of the word "actually" demands a more precise determination of the land to be excluded. While it is impractical to require a survey to determine the area of excluded land, the statute certainly requires that the assessing officer makes a reasonable, personal judgement as to the amount of land really put to the nonexempt use. Second, land use tax relief operates as an exemption or deferral from taxation. Consequently, all provisions of the Act ought to be strictly construed against the taxpayer. *See e.g., Manassas Lodge No. 1380, Loyal Order of Moose, Inc. V. County of Prince William,* 218 Va. 220, 237 S.E. 2d 102 (1977). To the extent that the administrative practice would tend to grant the landowner tax relief or deferral in more property than was intended by the General Assembly, such practice is erroneous.

It is suggested that the assessing officer has the administrative discretion to use the "three acre" rule for two reasons: (1) the practice is a reasonable exercise of his authority under § 58-769.9(c) (58.1-3236), and (2) by excluding the three acres from special assessment, he is assessing home sites throughout the A-3 zone equally,[1] whether or not the home sites are attached to acreage receiving special assessment. Neither contention is valid.

First § 58-769.9(c) (58.1-3236) provides only that the land and structures which do not qualify for land use taxation "shall be valued, assessed and taxed by the same standards, methods and procedures as other taxable structures, methods and procedures as other taxable structures and other real estate in the locality." This section deals only with valuation. It has nothing to do with determining the "extent" of qualifying or nonqualifying land, which is what the assessor is required to do under § 58-769.9(b) (58.1-3236).

Second, this Office has previously found that "the use of the land rather than its zoning classification is the basis for qualification for land use taxation." *See* Report of the Attorney General (1975-1976) at 357. Consequently, the zoning status of the land has no bearing on the question you ask.

Based upon the foregoing, it is my opinion that the local assessor does not have the discretion, for purposes of administrative convenience, to apply a standard "three-acre" rule to determine the area of real estate not put to a special use within the meaning of § 58-769.9(b) (58.1-3236).

---

[1]*You say that large portions of your county are zoned "A-3," an agricultural/residential category which requires a minimum of three acres for every home site.*

April 2, 1979

THE HONORABLE BENJAMIN L. PINCKARD
Commissioner of the Revenue for Franklin County

You have asked several questions concerning land use taxation and the business license tax.

Land Use Taxation

You first ask if an applicant for land use taxation may obtain

enrollment of only a portion of a parcel of land which is separately stated on the local land book. For the reasons set forth below, the answer to this question is no.

Article X, Section 2, of the Virginia Constitution (1971), provides that the General Assembly enacted what is popularly known as the Land Use Assessment Act (hereinafter the "Act"), §§ 58-769.4 *et seq*. (58.1-3229), of the Code of Virginia (1950), as amended. The Act explicitly sets for the limits, conditions and extent of the tax relief available. Further, this Office has ruled previously that even a local government is without authority to modify the conditions and standards established by the General Assembly for land use taxation relief. *See* Opinion to the Honorable J. E. Givens, Chairman, Commission of the Industry of Agriculture, dated August 21, 1972, and found in the Report of the Attorney General (1972-1973) at 447.

The Act specifically requires that application for land use taxation must be made upon each parcel of land owned by the applicant, as such parcel appears on the land book. *See* §§ 58-769.8 (58.1-3234) and 58-769.7 (58.1-3233). The requirement that each parcel be valued as a whole and readily identifiable by reference to the local land book is necessary because an inchoate tax lien exists against the parcel from the moment it is accorded preferable tax treatment under the Act. Such lien may ripen into an actual lien upon a change in use of the parcel. *See* § 58-769.10 (58.1-3237).

Based upon the foregoing, it is my opinion that a landowner may not obtain preferable land use tax treatment on less than the full acreage of a parcel of real estate, as such parcel is described upon the land book.

(Ed. Note: Opinion presented contains only that portion relating to use-value assessment.)

June 7,1978

THE HONORABLE BENJAMIN L. PINCKARD
Commissioner of the Revenue for Franklin County

You have asked several questions concerning land use taxation and personal property tax penalties.

Land Use Taxation

1. You ask if it would be legal in a county which has adopted land use taxation as authorized by § 58-769.4 *et seq.* (58.1-3229) of the Code of Virginia (1950), as amended, to charge an annual revalidation fee for such application for taxation on the basis of use assessment.

Section 58-769.8 (58.1-3234) provides that, in order to enjoy land use taxation, the land owner "must submit an application for taxation on the basis of use assessment to the local assessing officer . . ." within a statutorily prescribed length of time.

It further provides that a locality may require an annual revalidation of previously approved applications for land use assessment. Moreover, the statute specifically provides that "*an application fee* may be required to accompany all such applications" but, no fee is authorized for revalidation of an application. (Emphasis added.) I am advised that the Real Estate Appraisal and Mapping Division of the Department of Taxation, which assists in the local administration of the land use taxation laws, does not interpret § 58-769.8 (58.1-3234) to authorize a fee for the mere revalidation of an application. Thus, it is my opinion that § 58-769.8 (58.1-3234) does not authorize a locality to require any fee upon the revalidation of an application of an application for land use taxation.

2. You ask if it would be legal to require a reapplication fee each year for each parcel which has previously qualified for land use taxation.

There is no doubt that a locality may require an application fee to accompany all applications. Section 58-769.8 (58.1-3234) clearly provides, however, that an application is required in two circumstances only: I) upon the initial application for land use taxation and, 2) "(a)n application shall be submitted whenever the use or acreage of such land previously approved changes . . "

Consequently, it is my opinion that a locality may not require reapplication or a reapplication fee for land use taxation, except where the use or acreage of the land previously approved changes.

(Ed. Note: See amendments to the Code of Virginia since this opinion presented contains only that portion relating to use value assessment.)

January 13,1978

THE HONORABLE CHARLES K. TRIBLE
Auditor of Public Accounts

This is in response to your inquiry in which you raised several questions concerning the imposition of roll-back taxes. Section 58-769.10 (58.1-3237) of the Code of Virginia (1950), as amended, provides for the assessment of roll-back taxes when the use of land assessed under a land use assessment program is changed to a nonqualifying use. The land owner becomes subject to a roll-back tax, which essentially is a tax consisting of the differences between the tax which would have been owing had the land been assessed at fair market value, and the tax which was paid under the use value assessment. In addition, the land owner is liable for interest on this difference.

I will answer your questions *seriatim*:

> *"(1) Is the Commissioner of Revenue or the Treasurer responsible for assessing the six percent per annum simple interest pursuant to § 58-769.10 (58.1-3237)?"*

Section 58.769.10 (58.1-3237) is silent as to the responsibility for computing and assessing the interest which is owed on the roll-back tax. Under the terms of § 58-769.10 (58.1-3237) the commissioner of revenue is to determine and assess the roll-back tax and the tax is to be paid by the taxpayer to the treasurer within thirty days of assessment. Under § 58-864 (58.1-3103), it is the duty of the commissioner of the revenue to assess local taxes. The treasurer then is charged with the responsibility of collecting such taxes and levies. There is no reason to believe that the General Assembly, in enacting § 58-769.10 (58.1-3237) intended that this division of responsibility be any different in the assessment and collection of roll-back taxes. Consequently, I am of the opinion that the commissioner of the revenue should assess the roll-back taxes and forward this assessment to the treasurer. The treasurer can then send the bill to the taxpayer, with interest added, and collect the tax from the taxpayer in accordance with the terms of § 58-769.10 (58.1-3237).

> "(2) If the assessment is not paid within thirty days as required by the aforementioned statute, (§ 58-769.10) (58.1 3237) does an additional penalty attach similar to that provided for by § 58-963 (58.1-3915)?"

Where a taxpayer complies with the terms of § 58-769.10 (58.1-3237) and reports within sixty days a change in the use of his land to a nonconforming use, I am aware of no provision of law which would authorize imposition of penalty other than § 58-963 (58.1-3915). The penalty provided by § 58-963 (58.1-3915) is available when a person fails to pay a local levy on or before the fifth day of December. The amount of the penalty is five per centum of the outstanding tax liability.

Under § 58-769.10 (58.1-3237), roll-back taxes are not delinquent until thirty days after they have been assessed. Thus, for any roll-back taxes assessed prior to November 5, the penalty provided by § 58-963 (58.1-3351) would be available only where such taxes remain unpaid after December 5.

> "(3) Under the same facts as in number 2, does interest continue to run from the date of the original assessment of roll-back taxes at six percent per annum pursuant to § 58-769.10 (58.1-3237), or does the interest rate pursuant to § 58-964 (58.1-3918) apply after June 30 of the year next following the assessment year at eight percent per annum?"

The six per centum interest is to be computed and added to the amount of the roll-back taxes and becomes a liability which must be paid within thirty days following assessment, along with the roll-back taxes. Once the roll-back taxes have gone unpaid more than thirty days after assessment, they become delinquent taxes and should be treated in the same manner as other delinquent taxes. Thus, the provisions of § 58-964 (58.1-3354) providing for interest at the rate of eight per centum per annum from June 30 of the year following the assessment year are applicable to the delinquent roll-back taxes.

January 3, 1978

THE HONORABLE HENRY LEE CARTER
Commonwealth's Attorney, Orange County

You request my opinion whether the "*forestal land portion"* of an agricultural and forestal district, created in a locality pursuant to the Agricultural and Forestal Districts Act, §§ 15.1-1506 through 1513 of the Code of Virginia (1950), as amended, can qualify for land-use valuation and taxation pursuant to the Land Use Act. *See* §§ 58-769.4 through 769.16, and § 15.1-1512A. Your inquiry arises within a locality which has *partially* adopted the Land Use Act - *only* lands devoted to *agricultural* and *horticultural uses* qualify for land-use valuation and taxation. (Emphasis added.)

The Land Use Act authorizes the various taxing jurisdictions within the Commonwealth to allow real property, put to agricultural, horticultural, forest and open space uses, to be valued for property tax purposes at its "use-value." The "use-value" is lower than fair market value and results in property tax relief or deferral to the owner of the real property affected. The Agricultural and Forestal Districts Act (AFDS), enacted in 1977, extends the tax relief benefits of the Land Use Act to any parcel of land within a taxing jurisdiction which qualifies under the AFDS as an agricultural and/or forestal district. The interplay between the two Acts is what gives rise to your inquiry.

Section 15.1 - 1512A of the AFDS provides:

"Land used in agricultural and forestal production *within an agricultural and forestal district shall qualify for* an agricultural or *forestal value assessment* on such land pursuant to § 58-769.4 *et seq*. (58.1-3229), of the Code of Virginia, (Land Use Act), *if the requirements for such assessment contained therein are satisfied."* (Emphasis added).

Assuming all other requirements on the AFDA are complied with, § 15.1-1512A makes it clear that the forestal land portion of an agricultural and forestal district created in a locality pursuant to the AFDS qualifies for forest land use-valuation and taxation under the Land Use Act if such forest land satisfies the requirements of the Land Use Act, to-wit: § 58-769.5 (c) (58.1-3230), (definition of land devoted to forest use); and § 58-769.7 (58.1-3233), (minimum size of such land and local assessing officer's determination that land meets criteria of § 58-769.5(c)) (58.1-3230).

I am unaware of any provision in the AFDS which requires a locality to adopt the Land Use Act, as to any of the classifications of real property provided therein, as a condition precedent to the adoption of the AFDS in that locality. In fact, the General Assembly has expressed an opposite intention in this regard. The second paragraph of § 58-769.6 (58.1-3231) of the Land Use Act, enacted in 1977 as an amendment thereto and enacted contemporaneously with the AFDA, (Chapter 681 (1977) Acts of Assembly 1375, 1381) provides:

> "Land used in agricultural and forestal production within an agricultural and forestal district that has been established under § 15.1-1506 *et seq*., (the AFDA), shall be eligible for the use value assessment and taxation *whether or not a local land-use plan or local ordinance pursuant to* (the first paragraph of) § 58-769.6 (58.1-3231) has been adopted."

The clear language of the 1977 Amendment to § 58-769.6 (58.1-3231) states that a locality may implement the AFDA "whether or not" the locality has adopted "a local land-use plan or local ordinance," both of which are necessary conditions for implementation of the Land Use Act in any locality. Since the AFDA may be adopted in a locality which failed to comply with all requirements necessary for the adoption of the Land Use Act, in whole or in part, *a fortiori*, the AFDA may be adopted in a locality which has adopted the Land Use Act as to one or more of the classifications of real estate defined in § 58-769.5 (58.1-3230), as is the case in this instance.

I must point out that in order to qualify for land use assessment and taxation under either the AFDA or the Land Use Act, the locality must comply with the requirements of Article X, Section 2, of the Constitution of Virginia (1971), which provides, in pertinent part:

> "No such deferral or relief (from real estate taxes for real estate devoted to agricultural, horticultural, forest, or open-space uses) shall be granted within the territorial limits of any county, city, town or regional government *except by ordinance adopted by the governing body thereof"* (Emphasis added).

If the emphasized language of the 1977 Amendment to § 58-769.6 (58.1-3231) *supra*, is construed to allow land use-valuation and taxation under the AFDA without an "ordinance" as required under Article X, Section 2, *supra*, the Amendment

contravenes the Virginia Constitution, and in this respect the amendment is unconstitutional. That result is not necessary in this instance. A fundamental rule of statutory construction provides that where a statute is susceptible of two constructions, one of which is plainly within the legislative power and the other without, the court must adopt the former construction. *See Ocean View Improvement Corp. v Norfolk & W. Ry.*, 205 Va. 949, 955, 140 S.E.2d 700, 704 (1965). It is equally reasonable that the 1977 Amendment should be construed in the following manner. The emphasized portion of the 1977 Amendment to § 58-769.6 (58.1-3231), *supra*, is immediately preceded by the phrase, "shall be eligible for the use value assessment and taxation . . ." This phrase clarifies and limits the language which follows it. Thus, even though the locality may adopt the AFDA "whether or not" the locality has performed all acts necessary for adoption of the Land Use Act, it is merely "eligible" for tax deferral or relief. Accordingly, only if the locality conforms with all requirements of the AFDA and the Constitution, including the "ordinance" requirement of Article X, Section 2, does tax relief or deferral result.

Based upon the foregoing, it is my opinion that a locality may implement the AFDA without regard to whether the same locality has adopted the Land Use Act as to any or all of the classifications of real property provided therein, but tax deferral or relief accrues only if all requirements detailed in the AFDA and the Constitution of Virginia are met.

(Ed. Note: See amendments to the Code of Virginia since this opinion.)

December 12, 1977

THE HONORABLE W. H. FORST, CHAIRMAN
State Land Evaluation Advisory Committee

This is in response to your letter submitted on behalf of the State Land Evaluation Advisory Committee (SLEAC). I shall respond to your inquiries *seriatim*.

1. Are horticultural products, i.e., orchard trees vineyards and nursery stock, real property for the purpose of taxation pursuant to § 58-769.4 (58.1-3229), *et seq.*?

It is not necessary to decide whether all horticultural products, under all circumstances, constitute real property in the common law sense, for the purpose of assessing and taxing real estate. Sections 58-769.4 through 769.15:1 (58.1-3229 through 3244) of the Code of Virginia (1950), as amended, provided, *inter alia*, that "real estate devoted to horticultural use" may be assessed and taxed by the locality at a special land use-value. To determine the land use-value, § 58-769.9 (58.1-3236) directs the local assessing official to "consider only those indicia of value which such real estate has for . . . horticultural, . . . *use* . . ." "In addition to use of his personal knowledge, judgment and experience *as to the value of real estate in . . .*, horticultural . . . *use*, he shall, in arriving at the value of such land, *consider available evidence of . . ., horticultural, . . . capability,* and the recommendations of value of such real estate as made by the State Land Evaluation Advisory Committee." (Emphasis added.)

Section 58-769.9 (58.1-3236) clearly contemplates that the value of the various horticultural products located and grown on real property devoted to horticultural use is an important factor in determining the "horticultural capability" of the particular real estate, and ultimately, the land's use-value, I concur with the position enunciated previously by this office that if real estate is "devoted to horticultural use," within the context of § 58-769(b) (58.1-3236), then the horticultural products located and grown thereon are, in the limited sense indicated in this opinion, "assessed as real estate for the purpose of land use taxation." *See* Opinion of this Office to the Honorable Russell I. Townsend, Jr., Member, Senate of Virginia, dated February 23,1976, and found in the Report of the Attorney General (1975-1976) at 358.

> 2. "Although not specifically authorized by law, is the 'add on' method recommended by the Committee (SLEAC) for use-value assessment (of certain horticultural lands) pursuant to Paragraph 58-769.4, *et seq*. (58.1-3229), permitted by law and sufficiently reasonable to withstand attack as being arbitrary and capricious?"

The reason for the adoption of the "add on" method of use valuation and the conditions under which it may be implemented were recently published by SLEAC in its *Procedures for Determining Ranges of Use-Values,* at 13 (Sept. 1977) (SLEAC, *Procedures*) as follows:

> "Because of the complexity of determining the use-value of land devoted to vineyard and nursery use, the SLEAC recommends for the tax-year 1978 that use-values of land devoted to such use in the applicable jurisdiction to be those values determined, suggested, and published for land in agricultural use in such jurisdiction. After the use-value of the land is determined, the use-value of the vineyard or nursery items on the land may, pursuant to authority in Section 58-769.9 (58.1-3236) of the Code, be appraised by the responsible officials in each of the several jurisdictions authorizing use-value taxation of real estate in horticultural use." (Emphasis added.)

"What constitutes arbitrary action is difficult to define, because it is dependent upon the purpose and subject of a particular act and the circumstances and conditions surrounding it." *Newport News v. Elizabeth City Co.*, 189 Va. 825, 840,55 S.E. 2d 56,64 (1949). Generally, administrative action is arbitrary and capricious where it represents the will or whim of the administrative body rather than its judgment or where it has no reasonable basis, no reasonable relation to a lawful purpose, or is without support of the evidence. *See* 2 Am. Jur. 2d, *Administrative Law*, § 651(1962), and cases cited therein.

In the face of inadequate financial data upon which to determine the use-value of land devoted to nursery and vineyard horticultural uses, SLEAC recommends that the use value of comparable agricultural land in the locality is a suitable starting-off place to determine such use-value.

Section 3.1-646.1, Code of Virginia (1950), as amended, provides, in pertinent part:

> "Whenever the terms 'agriculture, agricultural purposes, *agricultural uses'* or words of similar import are used in *any of the statutes of the State of Virginia, such terms shall include* horticulture . . ., horticultural purposes . . ., *horticultural uses* . . ., and words of similar import applicable to agriculture shall likewise be applicable to horticulture. . ." (Emphasis added.)

The General Assembly has clearly recognized the many similarities between the horticultural and agricultural

industries. It is not unreasonable, therefore, to utilize the usevalue of comparable agricultural land as a framework upon which to ascertain the use-value of certain horticultural lands. "After the (agricultural) use-value of the land is determined, the use-value of the vineyard or nursery items on the land may, *pursuant to authority in Section 58-769.9 (58.1-3236) of the Code,* be appraised by the . . " appropriate local assessing official. SEAC, *Procedures, supra*. The use of the word "may" clearly indicates that the "add on" of the use-value of the vineyard or nursery is discretionary with the local assessing official. The "add on" may be applied only in those instances where the local assessing official determines that the comparable agricultural use-value does not accurately reflect the total use-value of the particular horticultural land in question. *See generally* § 58-769.9 (58.1-3236).

Based upon the foregoing, it is my opinion that the "add on" method of valuation recommended by SLEAC for the valuation of land devoted to certain horticultural uses, as applied in the proper circumstance, is not an arbitrary and capricious exercise of the authority vested in SLEAC under § *58-769.4 et seq*. (58.1-3229).

December 7, 1976

THE HONORABLE W. H. FORST, CHAIRMAN
State Land Evaluation Advisory Committee

This is in response to your recent letter from which I quote:

> "The State Land Evaluation Advisory Committee is charged by law (§ 58-769.11) (58.1-3239) with the duty of determining and publishing a range of suggested values for each of the several soil conservation service land capability classifications for agricultural, horticultural, forestry and open space uses in the various areas of the State as needed to carry out the provisions of Article 1.1 of Chapter 15 of the Code of Virginia (1950), as amended.
>
> "It has been the policy of this Committee to determine and publish a range of values each year for each of the uses eligible for special assessment under the required local ordinance. Most of the localities utilizing the special assessment of real estate devoted to agricultural, horticultural, forest or open space land, reassess periodically under special statutes. Do the uniformity provisions of Article X, Section 1, of the Constitution, particularly as construed by the Virginia Supreme Court in the case of *Perkins v. County of Albermarle*, 214 Va. 416, require that use-value assessments be applied as of each year?"

Article X, Section 1, of the Virginia Constitution provides, in pertinent part:

> ". . . All taxes shall be . . . uniform upon the same classes of subjects within the territorial limits of the authority levying the tax . . ."

Article X, Section 2, of the Constitution specifically permits the General Assembly to "define and classify real estate devoted to agriculture, horticultural, forest, or open space uses, and . . . by general law authorize any county, city, town or regional government to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate if it were not so classified . . ." Consequently, I am of the opinion that it is constitutionally permissible for the legislature to authorize taxation of special use real estate in a different manner than other real estate.

While such different treatment is constitutionally permissible, I am aware of no provision of law whereby the General Assembly has authorized localities to change the assessed value of the specialty assessed real estate between general reassessments. Section 58-759 (58.1-3320) provides that:

> "Taxes for each year on real estate subject to reassessment shall be extended on the basis of the last general reassessment made prior to such year, subject to such changes as may have been lawfully made."

Section 58-763 (58.1-3351) provides certain instances in which a locality may change the value of real estate between general reassessments but these instances do not include the annual publication of the range of values to which you refer.

Where a locality is on an annual assessment basis, values may be adjusted to reflect changes in the published range of values, since a reassessment would occur each year. In all other instances, i.e., where reassessments occur less frequently than annually, no statutory authority exists for permitting a locality to change the value of property assessed, under the land use provisions, merely to reflect a change in the published range of values. Consequently, I am of the opinion that, unless a locality is on annual assessment basis, adjustment of property values, made in accordance with the published range of values, is not authorized by law.

December 7, 1976

THE HONORABLE LOIS B. CHENAULT
Commissioner of the Revenue of Hanover County

This is in response to your inquiry whether real property owned by a public service corporation may qualify for land use assessment.

Pursuant to Article X, Section 2, of the Constitution of Virginia, the General Assembly enacted Article 1.1 of Chapter 15 of Title 58 (§§ 58-769.4 to -769.15:1) (58.1-3229 to 58.1-3244) of the Code of Virginia (1950) as amended, providing a separate tax classification of real property used in certain ways. Section 58.1-3231 provides in part, that [a]ny county, city or town in the Commonwealth which has adopted a land-use plan may adopt an ordinance to provide for the use value assessment and taxation, in accord with the provisions of this article, of real estate classified in § 58-769.5 (58.1 -3230)"

Article X, Section 2, of the Constitution specifies that real property owned by a public service corporation is a separate classification of property, to be assessed at the state level. Section 58-503.1 provides that the State Corporation Commission is the state agency authorized to assess public service corporation property for taxation. There is no constitutional or statutory provision permitting local assessment of special use real property owned by public service corporations, even in instances where a locality has enacted a land use assessment ordinance. I am of the opinion that § 58-503.1 (58.1-2600) requires that assessment of public service corporation property must be conducted by the State Corporation Commission, and that the Commission is without authority to assess on the basis of land use. *Cf.*

Report of the Attorney General (1971-1972) at 425.

October 13, 1976

THE HONORABLE LEE T. KEYES
Commissioner of the Revenue of Loudoun County

This is in response to your inquiry regarding "roll-back" taxes under the land use assessment program, as described in § 58-769.10 (58.1-3237) of the Code of Virginia (1950), as amended. You state you have a situation where an owner of land received permission to have the land assessed at a land use value and subsequently sold the land. The new owner was unaware that the land was restricted in use, due to the election of the former owner to qualify for land use assessment, and decided to use the land in a nonqualifying manner.

The third paragraph of § 58-769.10 (58.1-3237) provides as follows:

> "Liability to the roll-back taxes shall attach when a change in use occurs but not when a change in ownership of the title takes place if the new owner continues the real estate in the use for which it is classified under the conditions prescribed in this article and in the ordinance. The owner of any real estate liable for roll-back taxes shall, within sixty days following a change in use, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The Commissioner shall forthwith determine and assess the roll-back tax, which shall be paid to the treasurer within thirty days of assessment.

I am of the opinion that the owner of the land who makes the change which disqualifies the land from the land use assessment program should be billed for the roll-back taxes under this paragraph.

You have also asked if language in deeds of transfer stating that the land subject to land use assessment is "free from all encumbrances" is violated by the grantor's election to restrict the use of the land, in order to qualify for land use assessment. If the obligation to continue using the land in a manner to qualify for land use assessment in order to avoid liability for roll-back taxes can be considered an encumbrance, the grantee may have a cause of action against the grantor for any roll-back taxes which he is required to pay. This follows from the fact that, where roll-back taxes are not paid, the land is subject to a lien for these taxes. *See* Report of the Attorney General (1972-73) at 423.

Section 58-769.8 (58.1-3234) provides that the names of landowners whose land is assessed at a use value are to be indexed in the clerk's office, and thus land assessed at use value is a matter of public record. Knowledge, either actual or constructive, of an encumbrance, however, is not sufficient to relieve the grantor from his obligations under the deed of transfer. *See generally Adams v. Seymour*, 191 Va. 372,61 S.E.2d. 23 (1950). In discussing the nature of an encumbrance, one authority has stated that:

> "[A]lien or easement is properly viewed as a burden upon land, depreciative of its value, notwithstanding it does not directly conflict with the passage of title thereto. A burden may be only inchoate, yet if it is a right which may be enforced against the property and against the will and consent of the owner, it is within the category of an encumbrance" 5 MJ. *Covenants* §25 (1975 Cum. Supp. at 85-86).

Consequently, I am of the opinion that subjecting land to land use assessment and the possibility of future roll-back taxes constitutes an encumbrance. Despite this effect on the potential rights and duties of the parties, the deed represents a valid transfer of title between them.

February 23, 1976

THE HONORABLE RUSSELL I. TOWNSEND, JR.
Member, Senate of Virginia

This is in response to your requests for my opinion relating to land use taxation and assessment of real estate by localities which assess on a fiscal year basis.

Your first inquiry is as follows:

> "In accordance with Article I .1 Title 58, Code of Virginia, Section 58-769 (58.1-3341) through 58-769.16(58.1-3244), inclusive, is the value of the standing timber trees included in range of values suggested by the State Land Evaluation Advisory Committee? And, if so, *should* they be?"

In my Opinion to the Honorable R. S. Burruss, Jr., Member, Senate of Virginia, dated May 21, 1975, and found in the Report of the Attorney General (1974- 1975) at 492, I held that the value of timber standing on land classified as real estate devoted to forest use should be assessed on a land use basis as well as the real estate itself. Section 58-769.11 (58.1-3239) requires that the State Land Evaluation Advisory Committee determine and publish a range of values suggested values for land classified for forest use. Under this section, the value of the standing trees should be included in the range of values suggested by the Committee. To implement this requirement, the Division of Forestry of the Department of Conservation and Economic Development has computed a range of present values for standing timber. To these values, the Division has added $7.00 for the cost of seedlings. No allowance has been made for site preparation and no distinction has been made between the use value of a mature stand of timber and cut over woodland. The resulting values are published by the Committee in accordance with the requirements of § 58-769.11 (58.1 3239).

Your next inquiry is as follows:

> "What is the application of § 58-769 (58.1-3210 to 58.1-3219), as amended, concerning the 100 percent assessment as the same would apply to a locality which, in accordance with State laws and local charters, has adopted an annual assessment program and has adopted a fiscal year assessment date of July 1 in accordance with § 58-851.7: *i. e.* (58.1-3010), what would spread the 100 percent assessment on its Land Book? And, when would the State Corporation Commission be required to furnish the assessments at 100 per cent on Public Service properties to the locality?"

As a result of Senate Bill 597 introduced in the 1975 session of the General Assembly, § 58-760 (58.1-3201 and 58.1-3202), was amended to require that beginning, January 1, 1976, all general reassessment or annual assessments of

real estate must be made at 100 percent fair market value. In my opinion to the Honorable Frederic Lee Ruck, County Attorney for Fairfax County, dated July 8, 1975, a copy of which is enclosed, I held that the requirement of assessment at 100 percent fair market value will apply for the first time to those boards of assessors or annual assessors which begin the reassessment process on or after January 1, 1976, with the necessary result that the first effective tax day for the change on the land books will be January 1, 1977. Section 58-851.6 authorizes counties, cities, and towns to levy real estate taxes on a fiscal year basis of July 1 to June 30, and further provides that, except as authorized in § 58-851.7 (58.1-3010), all real estate in such a locality shall be assessed as of January 1 prior to such fiscal year. Section 58-851.7 (58.1-3010) provides that when a locality adopts fiscal year assessments, it may provide that real estate other than public service corporation property be assessed as of the first day of July. In localities adopting fiscal year assessments, public service corporation property must continue to be assessed at its value as of January 1 prior to such assessment date. Under these sections, the locality would spread the 100 percent assessment on its land book as of July 1 if its ordinance so provides. Public service corporation property, however, will continue to be assessed at its value as of January 1 prior to such assessment date. If no ordinance under § 58-851.7 has been adopted, the locality must continue to assess as of January 1 prior to such fiscal year as provided by § 58-796.6 (58.1-3231). In either event, the State Corporation Commission must assess public service corporation property at its value on January 1 prior to such fiscal year. Public service corporation values will be published in August for application by the locality as of the effective date of its assessment as hereinabove provided.

You further inquire as follows:

"Would horticulture products - trees, shrubs, boxwood, etc. " under § 58-758 (58.1-3200) be assessed as real estate for the purpose of taxation?"

Under §§ 58-769.4 (58.1-3229) to 769.15:1 (58.1-3244), real estate devoted to horticultural use may be assessed by the localities at a special land use rate under an ordinance adopted pursuant to § 58-769.6 (58.1-3231). If the locality adopts such an ordinance, real estate devoted to horticultural use is entitled to special assessment. The term real estate devoted to horticultural use is defined by § 58-769.5(b) (58.1-3230) to include "grapes, nuts, and berries; vegetables; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Commerce." Under such standards, trees shrubs and boxwoods are assessed as real estate for the purpose of land use taxation.

Your final inquiry is as follows:

> "In accordance with §§ 58-769.4 (58.1-3229) through 58-769.16 (58.1-3244), inclusive, if ownership of a property (or any portion thereof) changes while such property is assessed under an approved Land Use Assessment application, is the new owner required to file and/or refile for Land Use Assessment in order for the "Roll-Back Lien" to be applicable?"

Section 58-769.8 (58.1 - 3234) provides that property owners must submit an application for land use assessment by November I preceding the tax year for which taxation is sought. Once filed, an application remains valid unless the use or acreage of the previously approved land changes. Although the locality may require a property owner to revalidate his previously-approved application annually the application for prior years remains valid for future years unless the use or acreage of the land previously approved changes. Section 58-769.8 (58.1-3234) specifically provides that "[c]ontinuation of valuation, assessment and taxation under an ordinance adopted pursuant to this article shall depend on continuance of the real estate in the use for which classification is granted and compliance with the other requirements of this article and the ordinance *and not upon continuance in the same owner of title to the land."* (Emphasis added.) Accordingly, I am of the opinion that a change in ownership will not require an additional application unless a change in use or acreage also occurs.

(Ed. Note: See amendments to the Code of Virginia since this opinion.)

December 19,1975

THE HONORABLE E. O. RUDOLPH, JR. Commissioner of Revenue for Frederick County

This is in response to your request for my opinion whether a county wide rezoning, without the request of a property owner whose property qualifies for land use taxation, disqualifies the property for such land use taxation when the zoning changes from a less intensive to a more intensive classification.

Section 58-769.6 (58.1 -3231) of the Code of Virginia (1950), as amended, authorizes localities, which have adopted a land use plan, to enact ordinances which provide for the assessment and taxation of agricultural, horticultural, forest and open space land according to its use value. Section 58-769.7 (58.1 -3233) sets forth some of the criteria which must be met before land may qualify for land use taxation under an ordinance adopted pursuant to § 58-769.6 (58.1-3231). In addition to other requirements, § 58-769.7 (58.1-3233) requires that the property meet the use criteria set forth in § 58-769.5 (58.1-3230).

It is clear from the foregoing sections that the use of the land rather than its zoning classification is the basis for qualification for land use taxation. Section 58-769.10 (58.1-3237) further affirms this view by stating that, when the use changes to a nonqualifying use, the property may be subjected to roll-back taxes. In many instances, however, zoning changes do not terminate pre-existing uses. *Harbison v. City of Buffalo,* 4 N.Y.2d 553, 152 N.E.2d 42 (1958). *See Note,* 102 U.Pa. l. Rev. 91,92 (1953). If under amended zoning ordinance, an existing qualifying use is permitted to continue or a qualifying use is permissible despite the fact that nonqualifying uses are also permissible, qualifying land is still entitled to land use taxation.

(Ed. Note: See amendments to the Code of Virginia since this opinion.)

May 16, 1975

THE HONORABLE GEORGE R. ST. JOHN
County Attorney for Albemarle County

This is in response to your recent request for my opinion relating to special land use assessment under an Albemarle County Ordinance passed pursuant to § 58-769.6 (58.1-3231) of the Code of Virginia (1950), as amended. You ask whether a person who has entered a contract to buy property prior to November 1 of the year may apply for special land use

assessment although he will not acquire title to the property until after November 1.

Local real estate taxes are assessed against the owner of taxable property on January 1 of each taxable year. The word "owner" includes any person who has the usufruct, control, or occupation of the land on that date whether his interest is an absolute fee, or less than a fee. *City of Richmond v. McKenny* 194 Ba. 427,73 S.E.2d 781 (1951); *Stark v. City of Norfolk*, 183 Ba. 282,32 S.E.2d 59 (1944).

Special land use assessment of qualified property applies to such an owner as of January 1, provided the requirements of §§ 58-769.4 (58 1-3229) through 58-769.16 (58.1-3244) are met Section 58-769.15 (58.1-3243).

Section 58-769.8 requires that the owner submit an application for special land use taxation by November 1 of the preceding year so that the assessing officer may determine the propriety of such special assessment effective January 1. In my opinion, a person who has contracted to buy property prior to November 1 may apply for special land use assessment for the following year. The ownership requirement of § 58-769.8 (58.1-3234) will be met if he becomes an owner before January 1 of the following year.

May 21, 1975

THE HONORABLE R. S. BURRUS, JR.
Member, Senate of Virginia

This is in response to your recent request for my opinion relating to taxation of standing timber in counties that have adopted special land use assessments for forest land pursuant to § 58-769.6 (58.1-3231) of the Code of Virginia (1950), as amended. You ask whether, in such counties, a special land use assessment applies to both the land and the standing timber, or whether it applies only to the underlying land.

Under § 58-769.9 (58.1-3236), the assessing officer must assess qualifying forest land by considering only the indicia of value which it has for forest uses. Section 58-769.5(c) (58.13230) defines such real estate to include the underlying land and the standing timber and trees thereon. Therefore, a special use assessment of forest land applies to both the land and the standing timber thereon. My Opinion to the Honorable Andrew Ellis, Jr., dated September 19, 1974, held that the full fair market value of trees growing upon qualifying forest land should not be added to the use value of the underlying land for special assessment purposes. Rather, the use value of such trees, calculated pursuant to § 58-769.9 (58.1-3236), and in accordance with the procedures established by the State Land Evaluation Advisory Committee, should be added thereon. The State Land Evaluation Advisory Committee has developed a manual for classification, assessment, and taxation of such real estate. The forms incorporated therein reflect the requirements of the law respecting the inclusion of the value of standing timber in special land use valuation.

April 9,1975

THE HONORABLE LAWRENCE R. AMBROGI
Commonwealth's Attorney for Frederick County

I have received your recent letter inquiring whether a person who owns several contiguous parcels of real estate, all of which are eligible for use value tax assessment pursuant to § 58-769.4 (58.1-3229) et seq., *Code of Virginia* (1950), as amended, must make a separate application for such assessment as to each parcel, or whether all of the parcels may be included in one application.

The answer to your question depends upon the manner in which the parcels are assessed on the land book. If the parcels are jointly assessed on the land book, one application is sufficient. If the parcels are separately assessed on the land book, I am of the opinion that a separate application should be made for each parcel. Section 58-769. 9(d) (58.1-3236) provides that "land book records shall be maintained to show both the use value and the fair market value of such real estate" and the application forms prepared by the State Tax Commissioner pursuant to § 58-769.8 (58.1-3234) require certain land book data for the parcel as to which the application is submitted to be placed on the application. The instructions for the form state that an application "shall be filed for each line of the land book."

If separate parcels are combined in the application, it would be difficult for the commissioner of revenue to properly process the application and prepare the land book and it could create confusion if at a future date one of the parcels should be sold or become subject to the roll-back taxes imposed pursuant to § 58-769.10 (58.1-3237). Contiguous parcels of property which are owned by the same person or persons may be combined by the commissioner of revenue and entered on the land book as one parcel upon the request of the owner. *See* Report of the Attorney General (1958-1~/59) at 277. If this procedure is followed, separate land use applications would not be required.

March 18, 1975

THE HONORABLE GEORGE R. ST JOHN
County Attorney for Albemarle County

This is in response to your recent request for my opinion whether a county which elects to adopt a land use tax ordinance must readopt such an ordinance each year, or whether such an ordinance, once adopted, is continuous.

Special land use assessment and taxation is authorized by §§ 58-769.4 et seq. (58.1-3229) of the Code of Virginia (1950), as amended. Section 58-769.6 (58.1-3231) authorizes certain counties to adopt land use assessment ordinances, and provides:

". . . The provisions of this article shall not be applicable in any county, city or town for any year unless such an ordinance is adopted by the governing body thereof not later than June thirty of the previous year."

Once such an ordinance is adopted not later than June 30 of the preceding year, it has necessarily been adopted not later June 30 of all subsequent years. Therefore, the quoted provision does not require annual reenactment of a land use assessment ordinance.

(Ed. Note: See amendments to the Code of Virginia since this opinion)

January 27, 1975

THE HONORABLE FRANK M. MORTON, III
County Attorney for James City County

I have received your recent letter, from which I quote:

"James City County adopted in October of 1974, two categories of the Land Use Assessment Statute relating to agriculture and horticulture. Subsequent to the adoption of same and while processing applications thereunder, the following questions have arisen for which I would be grateful for your advice and guidance.

"1. May an owner with property qualifying under the agricultural and/or horticultural provisions include for purposes of relief additional forest property of less than 20 acres which property otherwise meets the standards for forestry under §§ 58-769.4 *et seq*. (58.1-3229), of the Code of Virginia, 1950, as amended?
"2. Would the answer to the above remain the same if the forest area was in excess of 20 acres?"

Section 58-769.4 *et seq*. (58.1-3229), Code of Virginia (1950), as amended, provides for real property taxation of certain land on the basis of its value for designated uses instead of its fair market value. Section 58-769.5 (58.1-3230) classifies and defines real estate devoted to agricultural, horticultural, forest and open-space use to permit such assessment and taxation, and §§ 58-769.5 (a) and (b) (58.13230) and 58-769.12 (58.1-3240) authorize the Commissioner of Agriculture and Commerce to prescribe uniform standards within the classifications. Pursuant to this authority, the Commissioner has promulgated a statement of these standards effective August 10, 1973, which provides that agricultural and horticultural uses include real estate devoted to the production for sale of '[t]rees or timber products of such quantity and so spaced as to constitute a forest area meeting standards prescribed by the Director of the Department of Conservation and Economic Development, if less than twenty (20) acres, and produced incidental to other farm operations" The less than twenty acre quantity was selected in view of the fact that land otherwise eligible for forest classification must consist of a minimum of twenty acres as required by § 58-769.7(b) (58.1-3233), and therefore if the tract was twenty acres or greater in size it would qualify for forest use assessment.

In consideration of the foregoing, I am of the opinion that property qualifying for agricultural or horticultural use value assessment includes forest property of less than twenty acres, when devoted to the production for sale of trees or timber products incidental to other farm operation, if such land constitutes a forest area within the standards prescribed by the Director of the Department of Conservation and Economic Development. With respect to your second question, since the standards limit the quantity of forest property eligible for agricultural or horticultural use value assessment to less than twenty acres, only that portion of the forest land in excess of this amount must be taxed on the basis of its fair market value where the county has not elected to adopt an ordinance providing for use value assessment of forest land.

(Standards for forest land now prescribed by State Forester)

June 10, 1974

THE HONORABLE IVAN D. MAPP
Commissioner of Revenue for the City of Virginia Beach

Your letter of May 30 requested an interpretation of the 1974 amendment to § 58-769.6 (58.1-3231), Code of Virginia (1950), as amended, which restricts the application of an ordinance for special assessment of agricultural, horticultural, forest and open space real estate as follows:

> "The provisions of this article shall not be applicable in any county, city or town for any year unless an ordinance is adopted by the governing body thereof not later than June thirty of the previous year."

The language quoted above is intended to require localities to act on their use assessment ordinances early enough so that the complicated machinery for making assessments in accordance with use may be set in motion before the applications must be processed. You will note that the statute sets a deadline, but contains no restriction on how early the ordinance may be adopted. It is therefore my opinion that a use assessment ordinance which contains no expiration date is effective until repealed; § 58-769.6 (58.1-3231) does not require that it be reenacted every year.

(Ed. Note: See amendments to the Code of Virginia since this opinion.)

March 25, 1974

THE HONORABLE F. CALDWELL BAGLEY
County Attorney for Prince William County

Your recent letter requested an opinion whether Prince William County can adopt an ordinance for assessment of agricultural, horticultural, forest or open space land in accordance with use, under § 58-769.6 (58.1-3231), Code of Virginia (1950), as amended, if it has no county-wide comprehensive land-use plan, but only a partial plan as permitted under § 15.1-452.

In a letter to the Honorable Robert L. Gilliam, lll, Commonwealth's Attorney for Westmoreland County, dated September 13, 1972, a copy of which is enclosed, I ruled that § 58-769.6 (58.1-3231) required that a county have adopted a comprehensive plan before adopting a use assessment ordinance. The purpose of this statutory requirement is to permit the county to limit use assessment to those areas where the use of the land does not conflict with the county's plan of development. Moreover, the standards issued by the Department of Agriculture under § 58-769.12 (58.1-3240) require that the property be used consistently with the land-use plan of the county. As it is not possible to permit use taxation only in those areas of the county covered by a partial land-use plan, it is my opinion that the county must wait until it has adopted a completed plan before it adopts an ordinance under § 58-769.6 (58.1-3231).

June 7, 1973

THE HONORABLE ALICE JANE CHILDS
Commissioner of the Revenue for Fauquier County

Your letter of May 28 requested an opinion interpreting the requirement of § 58-769.8 (58.1-3234) of the Code of Virginia that "property owners" submit applications for taxation

on the basis of use under Article 1.1 of Chapter 15 of Title 58 of the Code of Virginia (§ 58-769.4) (58.1-3229).

The provisions for assessment of land devoted to agricultural, horticultural, forest and open space uses on the basis of its use extend to the landowner the privilege to pay taxes on a lower valuation of his property than fair market value. Section 58-769.10 (58.1-3237) providing for roll-back taxes in the case of a change in use, creates an obligation to which the landowner submits when he applies for assessment by use. Because the land will be subject to the lien of the roll-back taxes in the future, it is my opinion that the words "property owners" should be interpreted to mean all owners of the property, and therefore that all owners of any property for which an application is filed should be accounted for in the application I will answer your specific questions *seriatim*.

1. How should estate of heir property be handled?

It is my opinion that every heir to the property for which assessment in accordance with use is desired should sign the application unless an affidavit signed by all heirs is recorded in the Clerk's office designating the person who has the power to make such an application. It would be advisable for the Commissioner of the Revenue to note on the application the book and page on which this affidavit is recorded. If it is impossible to account for all the heirs, application should not be permitted until the question of ownership is resolved.

In my opinion, a witnessed "x" mark is acceptable for a person who is unable to write. Two witnesses would be advisable. It is not necessary to have it notarized.

(Ed. Note: See Amendments to the Code of Virginia since this opinion.)

June 1, 1973

THE HONORABLE DONALD W. DEVINE
Commonwealth's Attorney for Loudoun County

I have received your letter of May 10, 1973, from which I quote:

> "In October of 1972, the Loudoun County Board of Supervisors adopted an ordinance to provide for special assessment and taxation of agricultural, horticultural, forestry, and open space real estate pursuant to the provisions of Article I .1, Chapter 15, Title 58 of the Code of Virginia (1950) as amended. The Board of Supervisors at that time declared the ordinance to be effective for the 1973 real estate tax year. A number of property owners submitted applications for taxation on the basis of use assessment by November 1,1972 as required by § 58-769.8 (58.1-3234).
>
> "Under the provisions of § 58-769.5 (58 1-3230), 'real estate devoted to agricultural use' and 'real estate devoted to horticultural use' were established and defined, thereby requiring the local officer to insure that the applicant's real estate fell within the definition in § 58.769.5 (58.1-3230) and the requirements of § 58-769.7 were met relating to minimum acreage and gross revenue in determining qualifications for special land use tax treatment.

2. What procedures should be used where property is owned by infants?

In the case where the infant is residing with his parents, you may accept the signature of the parents or parent with whom he is living as that of his guardian. The child should be required to sign also if he is old enough to do so. Where the child is not residing with a parent, an instrument designating a guardian should be recorded in the Clerk's office.

3. When accepting applications from corporations, must all corporate officers sign?

The application should contain the signature of one officer who is authorized by the corporation to sign on its behalf. It is unnecessary for any more than one to sign.

4. Is it permissible for people claiming to be agents for landowners to sign the application?

Unless a power of attorney or other legal document designating the agent empowered to sign use assessment applications is recorded in the Clerk's office, no agents should be permitted to sign. Again, a marginal notation on the application of books and page would be advisable.

5. Is a witnessed "x" mark acceptable? Must it be notarized?

> "The 1973 Virginia General Assembly, in Chapter 209 of the Acts, amended § 58-769.5 (58 1-3230) to the extent of removing the statutory definitions of agricultural and horticultural real estate and inserting in their stead authority for the Commissioner of Agriculture and Commerce to prescribe uniform standards for real estate to meet in order to qualify for special treatment as agricultural or horticultural real estate. Due to the effect of the 1973 amendments, it now appears that certain real estate which appeared to be entitled to special assessment as agricultural or horticultural real estate under the 1971 Act will not be so entitled under the uniform standards soon to be prescribed by the Commissioner of Agriculture and Commerce.
>
> "In light of the foregoing, I request your opinion as to the following:
>
> "1. Can the Board of Supervisors change the effective date of the ordinance passed in October 1972 so that it would not now be effective for the 1973 tax year but, instead, would only be effective for tax year 1974, thereby allowing the local assessor to determine qualification for special assessment treatment under the forthcoming standards to be promulgated by the Commissioner of Agriculture and Commerce, and not under present law?
>
> "2. Can the Board apply the standards to be promulgated by the Commissioner of Agriculture and Commerce retroactive to January 1, 1973, so that qualification for special assessment for the 1973 tax year will be determined under the 1973 amendments and not the definitions of the 1971 Act?

"3. Can the Board apply the forthcoming standards to be promulgated by the Commissioner of Agriculture and Commerce for the remaining portion of the 1973 tax year?

"4. Would land owners who qualify for special assessment and taxation under the 1971 Act but whose real estate no longer qualifies under the 1973 amendment and the Commissioner's standards be subject to a roll-back tax for preceding years?"

With respect to your first question, I am unaware of any legal principle that would preclude the board from changing the effective date of the use assessment ordinance from January 1, 1973, to January 1, 1974. The tax rate has not yet been fixed, and the taxpayers have not been assessed with 1973 real property taxes. Although the applications required by § 58-769.8 (58.1-3234), Code of Virginia (1950), as amended, have been submitted and the property has been valued on the basis of its use for purposes of assessment, I am of the opinion that this action has not vested the taxpayers with a legal right to use value assessments for the 1973 tax year. Accordingly, I conclude that the board may defer the effective date of the ordinance to January 1, 1974.

Your second and third questions are related in that in either case a change in the qualifications at this time might result in denial of a taxpayer's right to apply for use assessment pursuant to § 58-769.8 (58.1-3234) because an application cannot now be accepted for the 1973 tax year. See my opinion to the Honorable Ivan Mapp, Commissioner of the Revenue for the City of Virginia Beach, dated March 30, 1973, a copy of which is enclosed. Assuming, *arguendo*, that a change could be made by the board pursuant to the amended statutes which become effective today, the board cannot, in my opinion, select the portion of the amendments it wishes to follow and disregard the balance. Regardless of the fact that the standards to be promulgated are unlikely to broaden the qualifying uses, it is conceivable that a use previously thought to be ineligible might be within the standards. In addition, § 58-769.7(b) (58.1-3233) no longer contains the gross sales provision and thus property which was not eligible because it had not produced sufficient revenue in prior years can now qualify. It is my opinion, therefore that the answer to your second and third question is in the negative.

In reply to your fourth question, § 58-769.10 (58.1-3237) provides that property is subject to roll-back taxes when ". . . the *use* by which it qualified changes, to a nonqualifying use . . ." (Emphasis supplied.) The statute does not purport to subject property to such taxes unless its use changes; and, therefore, I am of the opinion that a change in the statutory criteria for use value assessment does not operate to subject property which no longer qualifies to the roll-back taxes.

March 30, 1973

THE HONORABLE IVAN MAPP
Commissioner of the Revenue for the City of Virginia Beach

I have received your letter of March 21, 1973, from which I quote:

"Several property owners who live in Virginia Beach have failed to meet the deadline of November 1, 1972 to file an application with this office to have property assessed under the new State law as it applies to special assessments of agricultural, forest and open space real estate.

"These people have expressed a desire to make application at this time. I will appreciate if you will advise me whether or not the law permits the Commissioner of Revenue to accept applications, process them and assess real estate as open space land after the expiration of the deadline "

Article X, Section 2, of the revised Constitution of Virginia provides that the General Assembly may define and classify real estate devoted to agriculture, horticultural, forest, or open space uses and may by general law authorize any locality to allow deferral of, or relief from, portions of taxes otherwise payable on such real estate. The General Assembly is required to ". . . prescribe the limits, conditions, and extent of such deferral or relief."

Section 58-769.4, *et seq*. (58.1-3229), Code of Virginia (1950), as amended, authorizes counties, cities and towns to adopt an ordinance providing for assessments of certain land upon the basis of its value for the use to which it is devoted Section 58-769.8 (58.1-3234) provides, *inter alia*:

"Property owners must submit an application for taxation on the basis of a use assessment to the commissioner of the revenue by November one preceding each tax year for which such taxation is sought"

Section 58-769.8 (58.1-3234) prescribes, in unequivocal terms, one of the conditions of tax relief which is authorized by Article X, Section 6. Therefore, it is my opinion that the commissioner of the revenue is not permitted to accept applications for use assessment for any tax year after the deadline of November one of the preceding year.

(Ed. Note: See amendments to the Code of Virginia since this opinion.)

September 13, 1972

THE HONORABLE ROBERT L. GILLIAM, III
Commonwealth's Attorney for Westmoreland County

I have received your recent letter inquiring whether § 58-769.6, (58.1-3231) Code of Virginia (1950), as amended, requires that a county adopt a "land-use plan" pursuant to § 15.1-446 as a condition precedent to the adoption of an ordinance under § 58.769-6 (58.1-3231). You indicate that Westmoreland County has enacted a zoning ordinance and zoning map but has not adopted a "land-use plan."

Section 58.769-6, (58.1-3231) authorizing local governing bodies to classify and assess agricultural, horticultural, forest and open space land on the basis of use, provides in pertinent part:

"Any county, city or town in the Commonwealth *which has adopted a land-use plan* may adopt an ordinance to provide for the assessment and taxation, in accordance with the provisions of this article, of real estate classified in § 58-769.5 (58.1-3230)." (Emphasis supplied.)

The emphasized wording was not present in the preliminary drafts of the proposed bill but was added during the legislative process.

Section 15.1-446 contemplates the preparation of a comprehensive plan for the physical development of the territory within its jurisdiction by the local planning commission. Such plan shall show the commission's long range recommendations for the general development of the territory covered by the plan. The portion of the plan designating areas for various types of public and private development and use, such as different kinds of residential, commercial, industrial, agricultural, conservation, recreation, public service, flood plain and drainage, and other areas may be known as a 'Land Use Plan"

Although § 58-769.6 (58.1-3231) does not specifically refer to the § 15.1-446 "land-use plan," the Commission of the Industry of Agriculture approved a model ordinance to be used by localities which contained a footnote providing that "a land-use plan pursuant to Virginia Code § 15.1-446 is required by [§ 58-769.6] (58.1-3231) to be adopted before the enactment of this ordinance." In view of this interpretation of § 58-769.6 (58.1-3231) by a State agency which was actively involved in the preparation and implementation of the bill providing for use assessment, I am of the opinion that a "land-use plan" pursuant to § 15.1-446 must be adopted by a country prior to its enactment of an ordinance under § 58-769.6 (58.1-3231).

September 12, 1972

THE HONORABLE HERBERT A. PICKFORD
County Attorney for Albemarle County

Your letter of September 7 requests an opinion whether a locality may adopt an ordinance pursuant to Article 1.1 of Chapter 15 of Title 58 of the Code of Virginia (§ 58-769.4 *et seq.*) (58.1-3229) which provides minimum sizes for tracts which are greater than those set forth in § 58-769.7 (58.1-3233).

Section 58-769.7 (58.1-3233) states in part:

> "Prior to the assessment of any parcel of real estate under any ordinance adopted pursuant to this article, 'responsible officers' shall:
>
> > "(b) Determine further that real estate devoted to (1) agricultural or horticultural use consists of a minimum of five acres (2) forest use consists of a minimum of twenty acres and (3) open space use consists of a minimum of five acres."

In addition , § 58-769.6 (58.1-3231) states:

> "Such ordinance shall provide for the assessment and taxation in accordance with the provisions of this article of *all four classes of real estate set forth in §* 58-769.5 (58.1-3230.)" (Emphasis supplied)

Section 58-769.7 (58.1-3233) is mandatory in language. In addition, if a locality were able to increase the minimum acreage, it would be able to avoid the clear intent expressed in § 58-769.6 (58.1-3231) that all classes be taxed according to use if an ordinance is adopted. For these reasons, l am of the opinion that a locality may not increase the minimum acreage requirements.

(Ed Note: See amendments of the Code of Virginia since this opinion)

August 21, 1972

THE HONORABLE J. E. GIVENS, CHAIRMAN
Commission of the Industry of Agriculture

Your recent letter requested an interpretation of the constitutional provision permitting tax relief for land classified as agricultural, horticultural, forest, or open space. The pertinent part of Article X, Section 2, states as follows:

> "The General Assembly may define and classify real estate devoted to agricultural, horticultural, forest, or open space uses, and may by general law authorize any county, city, town, or regional government to allow deferral, or relief from, portions of taxes otherwise payable on real estate if it were not so classified, provided the General Assembly shall first determine that classification of such real estate for such purpose is in the public interest for the preservation or conservation of real estate for such uses. In the event the General Assembly defines and classifies real estate for such purposes, it shall prescribe the limits, conditions, and extent of such deferral or relief. No such deferral or relief shall be granted within the territorial limits of any county, city, town, or regional government except by ordinance adopted by the governing body thereof"

In 1971 the General Assembly enacted enabling legislation, which is found in Article 1.1 of Chapter 15 of Title 58 (§ 58--769.4 *et seq*.) (58.1-3229) of the *Code of Virginia*. You asked the following questions:

1. Could the General Assembly permit a local government to decide which one or more of the four classes of property should be allowed tax deferral?

Section 58-769.6 (58.1-3231) of the current enabling legislation requires that any ordinance permitting assessment according to use embrace all four classes of real estate. In my opinion, the constitutional provision quoted above permits but does not dictate the approach. The Constitution does require that the General Assembly determine that protection of any class is in the public interest before permitting tax deferral for it. The legislative finding in § 58-769.4 (58.1 -3229) is a general one, and applies equally to all four classes. It is my opinion that the General Assembly would have to make a separate finding as to each classification in order to permit a locality to provide for deferral on one class and not on the others.

There would not, in my opinion, be a constitutional objection if the General Assembly should permit a locality to defer tax on land used for agriculture but not that used for forests or horticulture even though horticultural and forest uses are usually considered types of agricultural use. The Constitution gives the General Assembly the power to define the classes of real estate as well as to establish them; so long as the definition is reasonable in relation to the legislative determination that preservation of such real estate is in the public interest. I believe the classification would be constitutional .

2. May a land-use plan, or a zoning ordinance, be used as an aid in classification of property?

Section 58-789.5 (58.1-3230) defines the classes of real estate eligible for tax deferral. The local ordinance granting deferral must use the same definitions. Unless the General Assembly changes these definitions to include a reference to zoning or land-use classification, a locality may not condition tax deferral under this statute on the classification of land in a zoning ordinance or land-use plan. However, the definitions of real estate devoted to forest and open space uses refer to standards set by the Director of the Department of Conservation and Economic Development and the Director of the Commission of Outdoor Recreation, respectively. In my opinion, those officials could include as a standard a requirement that the land be zoned for a use compatible with the definition in the statute, or be included on a land-use plan

3. Would classification in relation to zoning have any effect on the regular zoning procedures?

In my opinion, conditioning tax deferral on zoning would not change the zoning procedures now set out in the Code. In general, a change in zoning is made by the local governing body after recommendations from a planning commission on the motion of the property owner. The legality of the decision may be appealed to the court of record, and from there to the Supreme Court.

4. Could the procedure for classifying property according to use be channeled through the local governing body?

At present, application for assessment in accordance with use is made to the commissioner of the revenue. In my opinion, there would no constitutional objection if the General Assembly should designate the local governing body, or another official, to receive such applications. The Constitution does require that the General Assembly define the classes of property which may be exempt. Once a classification is made, all property within the class must be treated alike. For this reason, the governing body could not be given the power either to define the classes or to decide on a case by case basis which property should be permitted deferral; it would merely be permitted a ministerial determination whether certain property comes within a class defined by the General Assembly.

(Ed. Note: See amendments of the Code of Virginia since this opinion.)

June 23, 1971

THE HONORABLE M. PATTON ECHOLS, JR.
Member, Senate of Virginia

I have received your letter of June 12, from which I quote:

"This law [1971 Acts of Assembly, ch. 172] requires any county which uses it to make special classifications for all four categories, namely, agricultural, horticultural, forest and open space (*see* § 58-769.6).

"§ 58-769.5 defines open space in various ways, one of them being 'or assisting in the shaping of the character, direction, and timing of community development.'

"Would it be permissible for a county to adopt an open space definition that would use only that portion of (d) rather than all of it in view of the requirement that such ordinance shall provide for . . . *all four* classes of real estate?"

Virginia Code § 58-769.5(d) provides:

> "Real estate devoted to open space use shall mean real estate when so used as to be provided or preserved for park or recreational purposes conservation of land or other natural resources, flood ways, historic or scenic purposes, or assisting in the shaping of the character, direction and timing of community development, *under uniform standards prescribed by the Director of the Commission of Outdoor Recreation* pursuant to the authority set out in § 58-769.12, and the local ordinance." (Emphasis supplied.)

The clear intent of the General Assembly in enacting chapter 172 was to require the same standards to be used wherever a local use value tax ordinance is adopted. Indeed, as you point out in your letter, a locality may not pass an ordinance unless it gives tax relief to all four classes of property. In my opinion, a locality could not restrict the definition of property falling within any one class. To the extent, however, that the uniform standards to be prescribed by the Director of the Commission of outdoor Recreation require compliance with local land use plans, the locality may have some control over the property which will be given relief.

You also ask:

> "A secondary and related question is whether or not the reference in § 58-769.5(d) which mentions the 'standards prescribed by the director of the Commission of Outdoor Recreation' applies to the entire subsection(d) or whether it applies to 'assisting in the shaping of the character, etc.'"

Had the General Assembly intended the standards to apply only to the phrase, "assisting . . . development," there should have been no comma following the last word of the phrase. I construe the standards to apply to the entire subsection (d).

Part 4
Model Ordinance

MODEL ORDINANCE FOR SPECIAL ASSESSMENTS FOR AGRICULTURAL, HORTICULTURAL, FOREST OR OPEN SPACE REAL ESTATE

Be it ordained by the (county) (city) (town) of

§ 1. Findings. The (county) (city) (town) of finds that the preservation of real estate devoted to agricultural, horticultural, forest and open space uses[1] within its boundaries is in the public interest and, having heretofore adopted a land-use plan,[2] hereby ordains that such real estate shall be taxed in accordance with the provisions of Article 4 of Chapter 32 of Title 58.1 of the *Code of Virginia*: the standards prescribed by the Director of the Virginia Department of Conservation and Recreation, the Virginia Commissioner of Agriculture and Consumer Services, the State Forester, and this ordinance.[3]

§ 2. Application for special assessment; fees. (a) Applications for taxation of real estate on the basis of use assessment shall be submitted to the commissioner of the revenue (real estate assessor) (director of finance) on forms provided by the Virginia Department of Taxation and supplied by the commissioner of the revenue (real estate assessor) (director of finance). The application shall include such additional schedules, photographs, and drawings as may be required by the commissioner of the revenue (real estate assessor) (director of finance).[4]

(b) Application shall be submitted:

(1) At least sixty days preceding the tax year for which such taxation is sought; or

(2) In any year in which a general reassessment is being made, until thirty days have elapsed after the notice of increase in assessment has been mailed to the property owner in accordance with § 58.1-3330 of the *Code of Virginia*, or sixty days preceding the tax year, whichever is later.

(c) The application shall be signed by all owners [5] of the subject property. An owner of an undivided interest in the property may apply on behalf of owners that are minors or that cannot be located, upon submitting an affidavit attesting to such facts.

(d) A separate application shall be filed for each parcel or tract shown on the land book.

(e) An application fee of $_____ shall accompany each application. [6] [an additional $0.10 to $0.25 per acre is charged]. (f) [Optional]. An application may be filed within no more than sixty days after the filing deadline specified in subparagraph (b) above upon payment of a late filing fee in the sum of $_____.[7] (g) An application shall be submitted whenever the use or acreage of such land previously approved changes; provided, however, that no application shall be required when a change in acreage occurs solely as a result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved.

(h) If any tax on the land affected by an application is delinquent when the application is filed, then the application shall not be accepted. Upon payment of all delinquent taxes, interest, and penalties relating to such land, the application shall then be treated in accordance with the provisions of this section.[8]

(I) [Optional]. Such property owner must revalidate annually [9] with the commissioner of the revenue (real estate assessor) (director of finance) any application previously approved. A revalidation fee of $_____shall accompany each application for revalidation every sixth year.[10] Late filing of a revalidation form must be made on or before the effective date of the assessment and accompanied with a late filing fee of $.[11]

§ 3. Determination of use value and assessment.

(A) Promptly upon receipt of any application, the Commissioner of the Revenue (real estate assessor) (director of finance) shall determine whether the subject property meets the criteria for taxation under this ordinance. Article 4 of Chapter 32 of Title 58.1 of the *Code of Virginia*, and the applicable standards prescribed thereunder by the Director of the Department of Conservation and Recreation, the Commissioner of Agriculture and Consumer Services, and the State Forester.

(B) Minimum acreage.

(1) Real estate devoted to:

(a) agricultural or horticultural use shall consist of a minimum of five acres;

(b) forest use shall consist of a minimum of twenty acres.

(c) open-space use shall consist of a minimum of five acres, [Optional][except that real estate adjacent to a scenic river, a scenic highway, Virginia Byway or public property shall consist of a minimum of two acres. A scenic river, scenic highway, Virginia Byway or public property under this paragraph means those which are listed in the State Comprehensive Outdoor Recreational Plan, also known as the Virginia Outdoors Plan, a copy of which can be obtained from the Department of Conservation and Recreation, 203 Governor St., Suite 302, Richmond, VA 23219].

[Optional] For cities, counties, or towns having a population density greater than 5,000 per square mile:

(c) open-space use shall consist of a minimum of two acres.

(2) The foregoing requirements for minimum acreage shall be determined by adding together the total area of contiguous real estate excluding recorded subdivision lots titled in the same ownership. For purposes of this section, properties separated only by a public right of way are considered contiguous.

(C) In addition to meeting the foregoing requirements for minimum acreage, real estate devoted to open-space use shall be:

(1) within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to Chapter 36 (ɔ 15.1-1507 et seq.) of Title 15.1 of the *Code of Virginia*, or

(2) subject to a recorded perpetual easement that is held by a public body, and that promotes the open-space use classification as defined in § 58.1-3230 of the *Code of Virginia*, or

(3) subject to a recorded commitment meeting the standards prescribed by the Director of the Department of Conservation and Recreation and entered into by the landowner and the (city)(county)(town).[12]

(D) If the commissioner of the revenue (real estate assessor) (director of finance) determines that the property does meet such criteria, he shall determine the value of such property for its qualifying use, as well as its fair market value.[13]

(E) In determining whether the subject property meets the criteria for "agricultural use" or "horticultural use" the

commissioner of the revenue (real estate assessor) (director of finance) may request an opinion from the Commissioner of Agriculture and Consumer Services; in determining whether the subject property meets the criteria for "forest use" he may request an opinion from the State Forester; and in determining whether the subject property meets the criteria for "open space use" he may request an opinion from the Director of Conservation and Recreation. Upon the refusal of the Commissioner of Agriculture and Consumer Services, State Forester, or the Director of the Department of Conservation and Recreation to issue an opinion, or in the event of an unfavorable opinion which does not comport with standards set forth by the respective director, the party aggrieved may seek relief from any court of record wherein the real estate in question is located. If the court finds in his favor it may issue an order which shall serve in lieu of an opinion for the purposes of this ordinance.

§ 4. Taxation based on qualifying use. The use value and fair market value of any qualifying property shall be placed on the land book before delivery to the treasurer, and the tax shall be extended from the use value.[14] Continuation of valuation, assessment and taxation based upon land use shall depend on continuance of the real estate in a qualifying use, continued payment of taxes as required in § 58.1-3235 and compliance with the other requirements of Article 4 of Chapter 32 of Title 58.1 of the *Code of Virginia*, the applicable standards prescribed by the Director of the Department of Conservation and Recreation, the Commissioner of Agriculture and Consumer Services, the State Forester, and this ordinance and not upon continuance in the same owner of title to the land.

§ 5. Delinquent taxes. If on April 1 one of any year the taxes for any prior year on any parcel of real property which has a special assessment as provided for in this ordinance are delinquent, the (city/ county/town treasurer)(director of finance) shall send notice of that fact and the general provisions of § 58.1-3235 of the *Code of Virginia* to the property owner by first-class mail. If after sending such notice, such delinquent taxes remain unpaid on June 1, the treasurer shall notify the appropriate commissioner of the revenue (real estate assessor)(director of finance) who shall remove such parcel from the land use program. Such removal shall become effective for the current year.

§ 6. Change in use, zoning or area: roll-back taxes. There is hereby imposed a roll-back tax, and interest thereon, in such amounts as may be determined under Virginia Code § 58.1-3237, on real estate which has qualified for assessment and taxation on the basis of use under this ordinance, upon one or more of the following occurrences:

(a) when the use by which it qualified changes to a more intensive use;

(b) when it is rezoned to a more intensive use, as described in § 58.1-3237 of the *Code of Virginia*; or

(c) when one or more parcels, lots or pieces of land are separated or split off from the real estate, as described in э 58.1-3241 of the *Code of Virginia*.

§ 7. Failure to report changes; misstatements in application. (a) The owner of any real estate liable for roll-back taxes shall, within sixty days following a change in use, report such change to the commissioner of the revenue or other assessing officer on such forms as may be prescribed. The commissioner of the revenue shall forthwith determine and assess the roll-back tax, which shall be paid to the treasurer within 30 days of assessment. On failure to report within 60 days following such change in use and/or failure to pay within 30 days of assessment such owner shall be liable for an additional penalty equal to ten per centum[15] of the amount of the roll-back tax and interest, which penalty shall be collected as a part of the tax. In addition to such penalty for failure to make the required report, there is hereby imposed interest of one-half per centum[l6] of the amount of the roll-back tax, interest and penalty, for each month or fraction thereof during which the failure continues.

(b) Any person making material misstatement of fact other than a clerical error in any application filed pursuant hereto shall be liable for all taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon, and he shall be further assessed with an additional penalty of one hundred per centum[17] of such unpaid taxes. The term "material misstatement of fact" shall have the same meaning as it has under § 58.1-3238 of the *Code of Virginia*.

§ 8. Application of Title 58.1 of the *Code of Virginia*. The provisions of Title 58.1 of the *Code of Virginia* applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder mutatis mutandis including without limitation, provisions relating to tax liens and the correction of erroneous assessments, and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

§ 9. This ordinance shall be effective for all tax years beginning on and after _____.

[1] If the local government body prefers to permit special assessment of one, two, or three of these classifications of real estate, it may do so. In that event, only the applicable standards for the specific class shall apply, i.e., for agricultural use and horticultural use, those prescribed by the Commissioner of the Department of Agriculture and Consumer Services; for forest use, those prescribed by the State Forester; and for open-space use, those prescribed by the Director of the Department of Conservation and Recreation.

[2] A land use plan pursuant to the *Code of Virginia*, § 15.1-466, is required by the statute to be adopted before the enactment of this ordinance (land use regulation or zoning ordinances are not required by § 58.1-3231).

[3] No real estate qualifies for special assessment unless the procedures set forth herein are followed. In addition, reference is given to § 58.1-3231, last paragraph, as follows: "Notwithstanding any other provision of law, the governing body of any county, city or town shall be authorized to direct a general reassessment of real estate in the year following adoption of a an ordinance pursuant to this article."

Therefore, should the governing body desire such a general reassessment, it should be so stated as a paragraph (b) of Section 1 of this ordinance, thereby requiring the first paragraph to be lettered paragraph (a).

[4] Although it is not required by § 58.1-3236, much administrative confusion can be avoided if the owner is required to provide all information needed for the approval and processing of his application. Where necessary he should be able to get information from the local Extension Service, Soil Conservation Service and/or Agricultural Stabilization and Conservation Service Offices. When an applicant has more than one tract or parcel of land for which he desires special

assessment, administrative effort will be saved if he is encouraged to present the separate applications simultaneously.

[5] Only the record owners (all owners) of the property may apply. See § 58.1-3234 and the opinion of the Attorney General to the Honorable Alice Jane Childs, Commissioner of the Revenue for Fauquier County dated June 7, 1973.

[6] This fee is suggested but may be changed by the governing body so long as it is designed to reimburse the locality for administrative expense and does not provide substantial revenue.

[7] This provision is optional. If adopted the fee must be reasonable.

[8] This provision can be waived by local ordinance.

[9] Annual revalidation is an optional provision of law.

[10] This fee is suggested but optional and, in no event, shall it exceed the current application fee.

[11] As revalidation is optional, so is a late filing fee also optional.

[12] This model ordinance does not describe a procedure by which a local government would enter into a recorded commitment with a landowner, since such procedures will vary with the structure and preferences of each local government. The local governing body, however, should set forth in the ordinance a written commitment offered by a landowner

[13] Many of the potential problems related to this section may be anticipated and resolved by training programs that state agencies (Extension Service, Department of Taxation, and others) may be able to conduct.

[14] Special tax statements to owners who are approved for special assessment might show both the tax to be paid and the roll-back tax. This may be administratively simpler than showing only the amount to be paid.

[15] This penalty is suggested but may be changed by the governing body of the locality.

[16] This penalty is suggested but may be changed by the governing body of the locality.

[17] This penalty is fixed by the statute and may not be changed.

Part 5 Application Form for Taxation on the Basis of Land Use Assessment

LU-1 Real Estate Appraisal
4901034 (REV 11/03)

APPLICATION FOR TAXATION ON THE BASIS OF A LAND USE ASSESSMENT

A single application prepared in triplicate shall be filed for each line on the land book. More than one classification may be included on the one application. APPLICATION WILL NOT BE ACCEPTED IF THERE ARE DELINQUENT TAXES ON THIS PARCEL.

_____
County, City or Town

District, Ward or Borough: _____

Owner(s) Name appearing on Land Book

_____
Mailing Address:
_____
_____
_____

Telephone Number: _____

Official Use Only

Application No. _____ Yr. _____
Type Application: New _____ Split _____

Fee: $ _____ Taxes Verified _____

Map No. _____
No. of Acres _____
Description _____
_____
Date application must be returned by: _____
Official processing application: _____

QUALIFYING USES

1. Agricultural Use: . . . . . No. of Acres _____

Is this real estate devoted to the bona fide production for sale of plants and animals useful to man or devoted to and meeting the requirements and qualification for payments with an agency of the federal government?. . . . . YES ____ NO _____
1. What field crops are being produced to qualify this parcel of real estate under the agricultural standards . . . . . .
Hay ____ Corn ____ Soybeans ____ Alfalfa ____ Other _____

2. How many of the following animals were on the real estate the previous years? How many months? . . . . . .
Cows _____ Horses _____ Sheep _____ Swine _____ Chickens _____ Turkeys _____ Other _____

II. Horticulture Use: . . . . . No. of Acres _____

Is this real estate devoted to the bona fide production for sale of fruits of all kinds, vegetables; nursery and floral products or real estate devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government? . . . . . YES____ NO _____

III. Forest Use: . . . . . No. of Acres _____

Is this real estate devoted to forest use, including the standing timber and trees thereon, devoted to the growth in such quantity and so spaced and maintained as to constitute a forest area? . . . . . YES____ NO _____
IV. Open Space Use:. . . . . .No. of Acres _____

Is this real estate so used as to be provided or preserved for park or recreational purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan? . . . . . YES____ NO _____

AFFIDAVIT

I/we the undersigned certify that all land for which use taxation is requested meets all requirements of the uniform standards prescribed by the Commissioner of Agriculture and Consumer Services, the Director of the Department of Conservation and Recreation, and the State Forester. I/we declare under penalties of law that this application and any attachments hereto have been examined by me and to the best of my knowledge are true and correct. I/we do hereby grant permission to the Soil Conservation Service to provide information on Land Capability Classes to the proper authorities for the purpose of administering the land use ordinance.

Signature of owner or corporation officer: _____ Title: _____

Corporation name: _____

NOTE: Failure to obtain signatures of all parties owning an interest in this real estate constitutes a material misstatement of fact.

Signatures of all other parties owning an interest in this real estate.

_____ _____ _____
_____ _____ _____

§ 58.1-3238 Penalties - Any person failing to report properly any change in use of property for which an application for use value taxation had been filed shall be liable for all such taxes in such amount and at such times as if he had complied herewith and assessments had been properly made, and he shall be liable for, such penalties and interest thereon as may be provided by ordinance. Any person making a material misstatement of fact in any such application shall be liable for all such taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon. If such material misstatement was made with the intent to defraud the locality, he shall be further assessed with an additional penalty of 100% of such unpaid taxes.

INSTRUCTIONS

1.**GENERAL QUAUIFICATIONS -** Land may be eligible for special valuation and assessment when it meets the following criteria:

AGRICULTURAL: When devoted to the bona fide production for sale of plants and animals useful to man under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services. or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Requiring 5 acres minimum in agricultural use.

HORTICULTURAL: When devoted to the bona fide production for sale of fruits of all kinds, including grapes, nuts and berries: vegetables; nursery and floral products under uniform standards prescribed by the Commissioner of Agriculture and Consumer Services, or when devoted to and meeting the requirements and qualifications for payments or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government. Requiring 5 acres minimum.

FOREST: When devoted to tree growth in such quantity and so spaced and maintained as to constitute a forest area under standards prescribed by the State Forester. Requiring 20 acres minimum in forest use.

OPEN SPACE: When so used as to be provided or preserved for park or recreational purposes, conservation of land or other natural resources, floodways, historic or scenic purposes, or assisting in the shaping of the character, direction, and timing of community development or for the public interest and consistent with the local land-use plan under uniform standards prescribed by the Director of the Department of Conservation and Recreation. Requires 5 acres minimum in Open Space use unless the local ordinance specifies otherwise.

2. **FILING DATE -** Property owners must submit an application on the basis of a use assessment to the local assessing officer at least sixty days preceding the tax year for which such taxation is sought. In any year in which a general reassessment is being made such application may be submitted until thirty days have elapsed after the notice of increase in assessment is mailed.

3. **LATE FILING -** The governing body, by ordinance, may permit applications to be filed within no more than sixty (60) days after the filing deadline specified upon the payment of a late filing fee to be established by the governing body.

4. **PROOF OF QUALIFICATIONS -** The applicant must furnish, upon request of the local assessing officer, proof of all prerequisites to use valuation and assessment, such as proof of ownership, description, areas, uses, and production.

IMPORTANT CHANGE IN USE, ACREAGE OR ZONING ROLL BACK TAXES AND PENALTY

(a) Whenever land which has qualified for assessment and taxation according to use has been converted to a non-qualifying use or rezoned to a more intensive use at the request of the owner or his agent, that land is subject to the roll-back tax as provided in section 58.1-3237(D).

(b) In the event of a change in use, acreage, or zoning, the property owner must report such change to the local Commissioner of the Revenue, or other assessing officer, within sixty days of said change.

DO *NOT WRITE IN THIS* SPACE

LAND USE CALCULATIONS

AGRICULTURAL

Soil Capacity Class	Number of Acres	Rate Per Acre	Appraised Use Value
I			
II			
III			
IV			
V			
VI			
VII			
Tobacco			
Peanuts			
TOTALS:			$

OPEN SPACE:

TOTALS:			$

HORTICULTURAL (includes the value of nursery stock and orchard trees)

Type of use (i.e. apple, peach, etc.)	Soil Capability Class	Number of Acres		Rate Per Acre	= Appraised Use Value
			X		
	TOTALS:				$

FOREST (includes the value of standing timber trees)

Site index Grouping	Number of Acres	Rate Per Acre	Appraised Use Value
Excellent			
Good			
Fair			
Non-Prod.			
TOTALS:			$

RECAPITULATION

Use Value Appraisals	Acres	Use Value
AGRICULTURAL		$
HORTICULTURAL		$
FOREST		$
OPEN SPACE		$
TOTAL QUALIFIYING ACREAGE		TOTAL USE VALUE QUALIFYING LAND $

Fair Market Value-Ineligible Land		Fair Market Value
Farm House Acreage		$
Other Nonqualifying Acreage		$
Total Nonqualifying Acreage		$
Add: Qualifying & Nonqualifying Acreage		
TOTAL:		TOTAL FAIR MARKET VALUE OF NONQUALIFYING LAND $

ASSESSED USE VALUE OF QUALIFYING AND NONQUALIFYING REAL ESTATE

Land $

Bldgs. $

Total $

GRAND TOTAL LAND ASSESSMENT QUALIFYING AND NONQUALIFYING $